(22,244)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 337.

SEVERO OCHOA, VICTOR OCHOA, JOSE OCHOA, AND ANGEL GONZALES, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF J. OCHOA Y HERMANO, APPELLANTS,

vs.

ANA MARIA HERNANDEZ Y MORALES AND EUFEMIA HERNANDEZ Y MORALES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a Stated Term of the District Court of the United States for Porto Rico, Within and for the District Aforesaid, Begun and Held at the Court Rooms of said Court in the City of San Juan, on the Second Monday of April, Being the Eleventh Day of that Month, in the Year of Our Lord One Thousand Nine Hundred and Ten, and of the Independence of the United States of America the One Hundred and Thirty-fourth.

Present: The Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico.

Among other were the following proceedings, to wit:

2 *Bill of Complaint.*

(Filed October 12, 1908.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Equity.

ANA MARIA HERNANDEZ Y MORALES, Suing with Her Husband, Francisco Morales y Hernandez, and Eufemio Hernandez y Morales, Complainants,

vs.

J. OCHOA Y HERMANO, a Partnership Composed of Antonio Perez y Fernandez, Victor Ochoa, José Ochoa, Severo Ochoa, Angel Suarez y Sobrino, Defendants.

Bill of Complaint.

To the Honorable Judge of the District Court of the U. S. for Porto Rico:

I.

Ana Maria Hernandez y Morales, resident of the town of Naranjito, District of Porto Rico, wife of and suing in conjunction with Francisco Morales y Hernandez, a resident of Naranjito, District of Porto Rico, and Eufemio Hernandez y Morales, bring this their Bill of Complaint against J. Ochoa y Hermano, a partnership organized in Porto Rico and comprised of the above-named persons, to wit: Antonio Perez y Fernandez; Victor Ochoa; Jose Ochoa; Severo Ochoa, and Angel Suarez y Sobrino,—all subjects of the King of Spain and residents of the District of Porto Rico. And thereupon your orators complain and say:

3 II.

That said Complainants are brother and sister, children of Juan Hernandez and Genovera Morales, husband and wife, and grandparents of José Maria Hernandez and Ysabel Morales, both of whom died within a short time of one another about the year 1872; that the father of Complainants, Juan Hernandez, died in the year 1887.

III.

That the said José Maria Hernandez and Ysabel Morales, grandparents of your orators, several years before their death, became the owners of, and possessed of, a large tract of land in the Barrio "Nuevo," Jurisdiction of Naranjito, which they had acquired by purchase, little by little, from various persons, and which they occupied and cultivated until the time of their death, as aforesaid, about the year 1872.

IV.

That in the year 1872, upon the death of said José Maria Hernandez and Ysable Morales, their property passed to their children and was divided among them, a certain portion of which (which will hereinafter be described) passing into the possession of Juan Hernandez, father of your orators, who possessed it until his death in the year 1887.

V.

That said piece and parcel of land, which became the property of Juan Hernandez, as aforesaid, is bound and described, as follows:

"Rural:—An estate with a dwelling-house, situated in the barrio " of Barrion Nuevo, Jurisdiction of Naranjito, composed of One " Hundred and Six Cuerdas (106 Cuerdas), equivalent to Forty- " One (41) Hectares, Sixty-six (66) Areas, and Twenty-Two (22) " Centi-Areas, Bounded: on the East by the lands of Doña Maria " de Jesus Morales, Lorenzo Cintrón Cuevas, Aniceto Cintrón " Vasquez, Justo Cintrón Cuevas, Canuto Cintrón y Cintrón; on " the North by the lands of Celestino Ortiz Navarez and of Maria " Jesus Rodriguez; on the West by the lands of José Perez Rivera, " Maria Encarnacion Hernandez y Morales; and on the South by " the lands of Fermin Morales y Rivera.

which said land is to-day, on account of the transfer of some of the lands owned by adjacent property-owners as well as because of the death of others, bounded, as follows:

4 " Bounded on the North by the lands of Andrés Gonzales " Canton and Amalia Ayala; on the East by the lands of " Juan Angel Maldonado, Justo Cintron and Canuto Cintrón; on " the South by the lands of Alfredo Archilla; and on the West by " the lands of Alfredo Archilla.

That after the death of their father, as aforesaid, your orators, together with their mother, Genovera Morales, continued to live

upon the said property, above-described, until the same was taken possession of by the Defendants.

VII.

That on or about the 12th day of January, 1903, the Defendants, disregarding the right and title of your orators, and notwithstanding the fact that the property in question was in possession of your orators, did by a public deed attempt to acquire title to the above described property from one Raimundo Morales y Morales, maternal grandfather of your orators, who, regardless of, and in fraud of, the rights of your orators, had pretended during the minority of your orators to be the owner of, and had secured a possessory title to, the above-described property fraudulently and without notice to your orators and had pretended to convey the same by the said public instrument to the said defendant-partnership, the said partnership, by its members, well knowing that the said Raimundo Morales y Morales had never been the owner of the said property and that his right and title thereto was fraudulent and fictitious; and, furthermore, there being apparent in the record many defects in the securing of the said possessory title, and in the conversion thereof to dominio, of which the said defendant firm well knew at the time of the purchase of said property, the said dominio title and the record of the conversion of the possessory title being recorded in the proper Registrar's office.

VIII.

And your orators further aver that they were entitled upon the death of their said father to the possession of the property and to the rents and profits thereof, and that they have been ever since the death of their said father so entitled, and were in actual possession of the property until the year 1903, when they were deprived of the possession of the said property, and of the rents and profits thereof, by the acts of the said defendant-firm.

In consideration whereof, and for such as your orators are remediless in the premises at or by the strict rules of the Common Law and can only have relief in a Court of Equity, where matters of this nature are properly cognizable and relievable.

IX.

And to the end thereof that the said defendant-company may, if it can, show why your orators should not have the relief hereby prayed and may (not upon oath, an answer under oath hereby being expressly waived) according to the best of its knowledge, remembrance, information and belief, full, direct and true answer make to all and singular the premises, fully and particularly as if they the same were repeated and each of the members of the said defandant-company especially interrogated thereto paragraph by paragraph.

X.

And that the said defendant may set forth a list and description of all deeds, letters, writings and legal proceedings relating to the matters aforesaid which now are, or ever were, in its possession, or in the possession of any of the members of the said firm.

And that an accounting may be taken of the rents and profits of the said property from the said 12th day of January, 1903, until the date of this Complaint.

XI.

And your orators pray that it be decreed that the said property hereinabove described is subject to the interests of your orators and to be their property in full dominio; that the possessory title secured by the said Raimundo Morales y Morales be cancelled and held of naught; that the aforesaid conversion into and inscription of the dominio title of the aforesaid property in the name of the said Raimundo Morales y Morales be cancelled and held of naught; and that the said deed of conveyance to the said partnership, J. Ochoa y Hermano, by which the said Raimundo Morales y Morales
6 conveys the said property to the said J. Ochoa y Hermano, and the inscription thereof in the Registry of Property, be cancelled and held of naught, and that the title thereof be ordered and decreed to be vested in your orators above-named.

XII.

And your orators pray that it be decreed that the said defendant-company pay to your orators such sum of money as may be found to be the fair valuation for the rent and use of the said property during the period which your orators have been deprived of the use thereof.

And that your orators may have such other relief in the premises as the nature of the circumstances of this case may require and to your Honor seem meet.

Your orators further say that the matter in dispute herein exceeds, exclusive of interest and costs, the sum of Two Thousand Dollars ($2,000.00).

XIII.

May it please your Honor to grant unto your orators a Writ of Subpœna in Chancery, issued by and under the seal of this Honorable Court, directed to the said defendant-firm, J. Ochoa y Hermano, that it, by its representative, on a certain day therein-named and under a certain penalty therein to be expressed, be and appear before this Honorable Court and then and their full, true and direct answer make to this, your orators', bill of complaint, and to attend to, perform and abide such order, direction and decree thereof as

the nature of the case may require and to Your Honor may seem meet.

And your orators will ever pray.

(Signed) HENRY F. HORD,
JOSEPH ANDERSON, JR.,
Attorneys for Complainants.

7 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

On the 4th day of October, 1908, before me personally appeared Ana Hernandez y Morales, one of the above-named Complainants, who made solemn oath that she had read the foregoing bill of complaint, subscribed by her, and knows the contents thereof, and that the same is true of her own knowledge except as to the matters therein stated on information and belief, and as to those matters that she believes it to be true.

(Signed) Su
ANA x HERNANDEZ Y MORALES.
signo.
LUIS ARCHILLA.

Subscribed and sworn to before me this 4 day of October, 1908.

(Signed) ABELARDO CRUZ.
JUEZ DE PAZ.

[Seal and stamps.]

8 *Subpœna in Chancery.*

(Filed Oct. 13, 1908.)

In the District Court of the United States for Porto Rico, in Chancery, Sitting at San Juan.

No. 586. Equity.

ANA MARIA HERNANDEZ Y MORALES et al.
vs.
J. OCHOA Y HERMANO, a Partnership, etc.

Subpœna.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States to J. Ochoa y Hermano, a partnership composed of Antonio Perez y Fernandez, Victor Ochoa, José Ochoa, Severo Ochoa, and Angel Suarez y Sobrino, Greeting:

You are hereby commanded that you be and appear in the said District Court of the United States for Porto Rico, aforesaid, at the

court room of said Court in the City of San Juan, on the first Monday in November, 1908, the same being the second day of that month, then and there to answer a certain Bill in Chancery exhibited against you in said Court by Ana Maria Hernandez y Morales, suing with her husband Francisco Morales y Hernandez, and to do and receive what the said Court shall have considered in that behalf, and this you are not to omit under penalty of five thousand dollars ($5,000.00).

Witness, the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this 12th day of October, A. D. 1908; and in the 133d year of the Independence of the United States of America.

Attest:

[Seal of the United States District Court for Porto Rico.]

(Signed) JOHN L. GAY, *Clerk*,
By A. M. BACON, *Deputy*.

9 *Memorandum.*

(Pursuant to Rule 12, Supreme Court, U. S.)

You are hereby commanded to enter your appearance in the above entitled suit on or before the first Monday in November next, the same being the 2nd day of said month, A. D. 1908, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said bill may be taken pro confesso.

(Signed) JOHN L. GAY, *Clerk*,
By A. M. BACON, *Deputy*.

Received this writ on the 12 day of October, A. D. 1908. And on the *on the* 12 day of October, A. D. 1908, I served the same by handing a true copy thereof together with copy of complaint to said J. Ochoa Hermanos, by serving Angel Gonzalez, member of the firm of J. Ochoa y Hermanos.

And on the — day of ——, A. D. 190–, I left a like copy thereof at the usual place of residence of the said —— ——.

(Signed) H. S. HUBBARD, *Marshal*,
By JOHN L. HAAS, *Deputy*.

10 *Demurrer for Want of Jurisdiction.*

(Filed Nov. 4th, 1908.)

In the District Court of the United States for Porto Rico.

ANA MARIA HERNANDEZ Y MORALES et al.
vs.
J. OCHOA Y HERMANO.

Demurrer for Want of Jurisdiction.

The defendants, J. Ochoa y Hermano by protestation, not confessing or acknowledging all or any of the matters and things in

the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, and for causes of demurrer show:

I.

That it appears upon the face of the bill that the said partnership of J. Ochoa y Hermano is sued as such partnership.

II.

That as appears by the said bill the said plaintiff has a plain, adequate and complete remedy at law in and concerning the matter set forth in said bill, and that therefore the cause of action set forth in said bill is not within the jurisdiction of a Court of Equity.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto and humbly demand the judgment of this Court whether they shall be compelled to make any further or other answer to the said bill.

(Signed) T. D. MOTT, JR.,
Counsel for Defendants.

11 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Angel Gonzalez, being first duly sworn, deposes and says: That he is a member of the defendant partnership in the above entitled cause, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

(Signed) ANGEL GONZALES.

Subscribed and sworn to before me this 10th day of November, 1908.

(Signed) JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By C. A. DAVIDSON,
Deputy.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) T. D. MOTT, JR.,
Counsel for Defendants.

12 *Amended Bill in Equity.*

(Filed Nov. 11, 1908.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES, Suing with Her Husband, Francisco Morales y Hernandez, and Eufemio Hernandez y Morales, Complainants,

vs.

J. OCHOA Y HERMANO and ANTONIO PEREZ Y FERNANDEZ, VICTOR Ochoa, José Ochoa, Severo Ochoa, Angel Suarez y Sobrino, Doing Business under the Firm Name of J. Ochoa y Hermano, and Camilo Taboas, Defendants.

Bill of Complaint.

To the Honorable Judge of the District Court of the United States for Porto Rico:

I.

Ana Maria Hernandez y Morales, resident of the Town of Naranjito, District of Porto Rico, wife of and suing in conjunction with Francisco Morales y Hernandez, a resident of Naranjito, District of Porto Rico, and Eufemio Hernandez y Morales,—bring this their Bill of Complaint against J. Ochoa y Hermano and Antonio Perez y Fernandez, Victor Ochoa, José Ochoa, Severo Ochoa, and Angel Suarez y Sobrino, all subjects of the King of Spain and residents of the District of Porto Rico and doing business under the firm-name of "J. Ochoa y Hermano," and Camilo Taboas, subject of the King of Spain and a resident of the Town of Bayamón, District of Porto Rico,—and thereupon your orators complain and say:

13 II.

That said Complainants are brother and sister, children of Juan Hernandez and Genovera Morales, husband and wife, and grandparents of José Maria Hernandez and Ysabel Morales, both of whom died within a short time of one another about the year 1872; that the father of Complainants, Juan Hernandez, died in the year 1887.

III.

That the said José Maria Hernandez and Ysabel Morales, grandparents of your orators, several years before their death, became the owners of, and possessed of, a large tract of land in the Barrio "Nuevo," Jurisdiction of Naranjito, which they had acquired by purchase, little by little, from various persons, and which they oc-

cupied and cultivated until the time of their death, as aforesaid, about the year 1872.

IV.

That in the year 1872, upon the death of the said José Maria Hernandez and Ysabel Morales, their property passed to their children and was divided among them, a certain portion of which (which will hereinafter be described) passing into the possession of Juan Hernandez, father of your orators, who possessed it until his death in the year 1887.

V.

That the said piece and parcel of land which became the property of Juan Hernandez, as aforesaid, is bounded and described, as follows:

"Rural:—An estate with a dwelling-house, situated in the barrio "of Barrio Nuevo, Jurisdiction of Naranjito, composed of One Hun- "dred and Six Cuerdas (106 Cuerdas), equivalent to Forty-One "(41) Hectares, Sixty-Six (66) Areas, and Twenty-Two (22) "Centi-Areas,—Bounded: On the East by the lands of Doña Maria "de Jesus Morales, Lorenzo Cintrón Cuevas, Aniceto Cintrón Vas- "quez, Justo Cintrón Cuevas, Canuto Cintrón y Cintrón; on the "North by the lands of Celestino Ortiz Navarez and of Maria Jesus "Rodriguez; on the West by the lands of José Perez Rivera, Maria "Encarnacion Hernandez y Morales; and on the South by the lands "of Fermin Morales y Rivera.

which said land is to-day, on account of the transfer of some of the lands owned by adjacent property-owners, as well as because of the death of others, Bounded, as follows:

14 "On the North by the lands of Andrés Gonzalez Canton "and Amalia Ayala; on the East by the lands of Juan Angel "Maldonado, Justo Cintrón and Canuto Cintrón; on the South by "the lands of Alfredo Archilla; and on the West by the lands of "Alfredo Archilla.

VI.

That after the death of their father, as aforesaid, your orators, together with their mother, Genovera Morales, continued to live upon the said property, above described, until the same was taken possession of by the commercial partnership which is comprised of all of the Defendants above-named except the said Camilo Taboas.

VII.

That on or about the 12th day of January, 1903, the members of the Defendant partnership above-named, conspiring together with the Defendant Camilo Taboas and disregarding the right and title of your orators, and notwithstanding the fact that the property in question was in possession of your orator, Eufemio Hernandez, did by a public deed attempt to acquire title to the above described property from one Raimundo Morales y Morales, maternal grandfather

of your orators, who, regardless of and in fraud of, the rights of your orators, had pretended during the minority of your orators to be the owner of, while merely administering, said property, and had, conspiring with the Defendant, Camilo Taboas, secured a possessory title to the above-described property fraudulently and without notice of any kind to your orators, and had pretended to convey the same by the said public instrument to the said defendant-partnership, the members thereof well-knowing that the said Raimundo Morales y Morales was not, and never had been, the owner of the said property, and the right and title thereto that he claimed was fraudulent and fictitious, and also well-knowing that the property belonged to the Plaintiffs in this action. And, furthermore, there being apparent in the record many defects in the securing of the said possessory title, and in the conversion thereof to "dominio," of which the said Defendant-firm well knew at the time of the purchase of the said property, the said "dominio" title, and the record of the conversion of the possessory title, being recorded in the proper Registrar's Office.

15 VIII.

And your orators further aver that they were entitled, upon the death of their said father, to the possession of the property and to the rents and profits thereof, they being the owners in full "dominio" by inheritance and that they have been ever since the death of their said father so entitled, and were in actual possession of the property until the year 1903, which fact was well known to the Defendants when by the connivance of the said Defendant Camilo Taboas with the other Defendants they were deprived of the possession of said property and of the rents and profits thereof.

In consideration whereof, and for *such* as your orators are remediless in the premises at or by the strict rules of the common law and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable:

IX.

And to the end thereof that the said Defendants may, if they can, show why your orators should not have the relief prayed and may (not upon oath, an answer under oath hereby being expressly waived) according to the best of their knowledge, remembrance, information and belief, full, direct and true answer make to all and singular the premises, as fully and particularly as if the same were repeated and each of the Defendants especially interrogated thereto paragraph by paragraph.

X.

And that the said defendants may set forth a list and description of all deeds, letters, writings and legal proceedings relating to the matters aforesaid which now are, or ever were, in its possession, or in the possession of any of them, or prepared under their instructions or directions.

And that an accounting may be taken of the rents and profits of

the said property from the said 12th day of January, 1903, until the date of this complaint.

16

XI.

And your orators pray that it be decreed that the said property hereinabove described be subject to the interests of your orators and to be their property in full dominio; that the possessory title secured by the said Raimundo Morales y Morales be cancelled and held *of* naught; that the aforesaid conversion into and inscription of the "dominio" title of the aforesaid property in the name of the said Raimundo Morales y Morales be cancelled and held *of* naught; and that the said deed of conveyance to the said partnership, J. Ochoa y Hermano, by which the said Raimundo Morales y Morales pretends and attempts to convey the said property to the said J. Ochoa y Hermano and the inscription thereof in the Registry of Property, be cancelled and held *of* naught, and that the title thereof be ordered and decreed to be vested in your orators above-named and in them alone.

XII.

And your orators pray that it be decreed that the said Defendants pay to your orators such sum of money as may be found to be the fair valuation for the use and rent of the said property during the period which your orators have been deprived of the use thereof, and damages for the fraud committed upon them.

And that your orators may have such other relief in the premises as the nature of the case may require, and to Your Honor seem meet.

Your orators further say that the matter in dispute herein exceeds, exclusive of interest and cost, the sum of Two Thousand Dollars.

XIII.

May it please Your Honor to grant unto your orators a Writ of Subpoena in Chancery, issued by and under the seal of this Honorable Court, directed to the said defendants, that on a certain day therein named and under a certain penalty therein to be expressed they be and appear before this Honorable Court and then

17 and there, full, true and direct answer make to this, your orators', Bill of Complaint, and to *attend* to, perform and abide such order, direction and decree thereof as the nature of the case may require and to Your Honor may seem meet.

And your orators will ever pray.

(Signed) HENRY F. HORD,
JOSEPH ANDERSON, JR.,
Attorneys for Complainants.

Nov. 11, 1908.

18 *Journal Entry. No.* 586.

(November 13, 1908.)

Equity. No. 586.

ANA MARIA HERNANDEZ et al.
vs.
J. OCHOA Y HERMANO.

The demurrer to the amended bill of complaint in this cause was duly argued by counsel for the respective parties, and the Court, not being fully satisfied at the end thereof, requires briefs to be filed by Wednesday, the 18 instant.

19 *Journal Entry.*

December 31, 1908.

No. 586. Equity.

ANA MARIA HERNANDEZ, et al.,
vs.
J. OCHOA Y HERMANO.

In this cause the matter of the demurrer to the bill of complaint having been heretofore duly argued and submitted, the Court on the 26th day of December, instant, filed its opinion in that behalf, and now, therefore, in accordance therewith, it is:

Ordered that the demurrer be, and the same hereby is overruled.

20 *Separate Answer of the Above Defendant Firm to the Bill of Complaint of the Aforesaid Complainants.*

(Filed February 15, 1909.)

In the District Court of the United States for Porto Rico.

In Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES, Suing With Her Husband, Francisco Morales y Hernandez, and Eufemio Hernandez y Morales, Complainants,

vs.

J. OCHOA Y HERMANO, a Partnership Composed of ANTONIO Perez y Fernandez, Victor Ochoa, Jose Ochoa, Severo Ochoa, and Angel Suarez y Sobrino, Defendants.

Seperate Answer of the Above Defendant Firm to the Bill of Complaint of the Aforesaid Complainants.

These defendants now and at all times hereinafter saving to themselves all, and all manner of benefit of exception, or otherwise,

that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

I.

That as to the allegations contained in paragraphs marked I, II, III, IV, V, and VI of the said bill of complaint, these defendants have not, nor has any of them, sufficient information upon which to base an opinion or belief, and therefore deny the same.

II.

These defendants further answering the said bill deny that on the 12th of January, 1903, or at any time since the 28th day of
21 June, 1899, the complainants were or either of them has been the owners or owner, or entitled to any interest in the premises described in the bill of complaint herein; but these defendants allege the fact to be that on the 17th day of August, 1899, the dominio title in and to the said premises was duly recorded in the Registry of Property in and for the District of San Juan, Porto Rico, in the name of and as belonging to Raimundo Morales y Morales; that on the first day of June, 1901, the aforesaid title of dominio in and to the aforesaid premises still appearing upon the record as being in the name of and belonging to the aforesaid Raimundo Morales y Morales, he, the said Morales, duly executed, for a valuable consideration a public and notarial deed of sale of the said premises in favor of and to the defendant firm of J. Ochoa y Hermanos, which deed of sale was duly recorded on the 19th day of June, 1901. And these defendants further allege that at the time the said Raimundo Morales y Morales executed the deed of sale as aforesaid, in and to the premises aforesaid, and these defendants purchased as aforesaid the said premises, they, these defendants, fully and honestly believed the said Raimundo Morales y Morales to be the true, sole and lawful owner of the said premises and had no knowledge whatsoever, nor had any of these defendants any knowledge whatsoever, of any of the alleged claims, rights or titles of the complainants, or either of them, in or to the said premises. These defendants further say that at the time they so purchased the said premises from the said Raimundo Morales y Morales, and also at the time their said deed was recorded as aforesaid, the said Raimundo Morales y Morales appeared in the record to be the sole, true and lawful owner of the said premises and the title to the said premises was duly recorded in the name of said Raimundo Morales y Morales, and that there did not then exist or appear in the Registry any record in favor of these complainants, or either of them, or any other person, of any right, title, interest or claim of any nature or kind whatsoever in or to the aforesaid premises.

22 And these defendants deny that the time of the execution and delivery of the deed aforesaid, or the payment of the purchase price, or the recording of the deed of the defendants as afore-

said, these defendants had any notice, or knowledge of any kind, of the pretended rights, or claims, of these complainants, or either of them, in or to the said premises. And these defendants further deny any knowledge at any of the times aforesaid, or since, that the title of the said Raimundo Morales y Morales in or to the said premises was false or fictitious, and further deny that there were apparent on the record any defect, or defects, in the title of the said Raimundo Morales y Morales. And these defendants further deny that they, or any of them, have ever deprived, or are now depriving, the said complainants, or either of them, of the possession of the said premises, or of the rents or profits thereof, but allege the fact to be that the complaina-ts have not, nor has either of them, any right, title or interest in or to said premises, nor are they, nor is either of them, entitled to the possession of the said premises or to the rents or profits thereof for any time since the first day of June, 1901. And these defendants further deny that the said complainants are or either of them is, entitled to any accounting from these defendants, or from any of them, touching and regarding the aforesaid rents or profits of the said premises since the last date aforesaid or for any part of said times.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is no other matter, cause or thing in said complainant's bill of complaint contained material or necessary for these defendants to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, all of which matters and things these defendants
23 are willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. OCHOA Y HMO.
By ANGEL GONZALES.

(Signed) T. D. MOTT, JR.,
Solicitor for Defendants.

24 *Journal Entry.*

February 14, 1910.

586. Equity.

ANA M. HERNANDEZ et al.
vs.
J. OCHOA HERMANOS.

Upon motion of Joseph Anderson, of counsel for the complainants herein, this cause is dismissed as to the respondent Camilo Taboas.

25 *Opinion.*

(Filed April 2, 1910.)

ANA MARIA HERNANDEZ et al.
vs.
J. OCHOA Y HERMANO et al.

A suit at law was filed on the cause of action out of which the controversy involved in this litigation arises, under date of March 23, 1908. It was against the respondent firm of J. Ochoa y Hermano alone, the firm being made up of some five persons. After preliminary pleading, an issue was raised on the merits and the cause went to trial under stipulation before the Court alone without the intervention of a jury, on May 1, 1908, but after proceeding for some time it became manifest that the suit was on the wrong side of the court, and hence a nonsuit was requested, granted and taken with a view to filing a bill in equity to enforce plaintiffs' alleged rights.

Thereafter, under date of October 12, 1908, this bill in equity was filed against the same respondents forming the firm of J. Ochoa y Hermano, as aforesaid. On November 4th thereafter, the then respondents demurred to the bill, and two days later, on November 6th, complainants filed a motion to strike the demurrer from the files. Three days after this, on November 9th, this motion was overruled, and two days later, on November 11th, by leave of court, an amended bill was filed, which added the respondent Camilo Taboas as an additional party. However, no attention appears to have been paid to the adding of this additional party, and briefs on the demurrer of November 4th aforesaid were presented on both sides during the month. On December 26, 1908, the Court in an opinion of some length (4 P. R. 400-9) ordered the demurrer overruled.

26 On December 14, 1908, respondent Camilo Taboas appeared by counsel but filed no pleading of any sort. It is asserted in the pleadings, and is probably true, that his counsel thereafter withdrew his appearance, but it also appears that on January 14, 1909, said same respondent Taboas again appeared by the same counsel. Thereafter, on the 10th day of May, 1909, counsel for the complainants filed a paper alleging that said Taboas had appeared but had withdrawn his appearance, and they presented an order which the Court did not sign, endeavoring to take the bill as confessed against said respondent, but it was refused because his counsel had withdrawn without notifying him, and therefore the Clerk was required to immediately notify said respondent of the situation, and stated that if within ten days he did not appear, counsel for the complainants might then apply for the decree pro confesso.

Thereafter, on February 14, 1910, counsel for complainants appear to have abandoned their desire for the decree pro confesso, but instead asked for, and were granted leave to, and did dismiss the

bill as to said respondent Camilo Taboas. Then the cause, without any other change or amendment to the bill, remained at issue on the answer filed by the respondent firm of J. Ochoa y Hermano.

We cannot state the cause of action and the prayer of the bill clearer than we did in the opinion on the demurrer in 4 P. R. Fed. 401-2, supra, which is as follows:

This is a bill in equity praying that complainants be decreed to be the owners of 106 cuerdas of land situated in the barrio of Nuevo, in the jurisdiction of Naranjito, Porto Rico. In substance, they allege that they inherited this land from their paternal grandfather through their father, both of whom owned, possessed and occupied it successively for many years. That while complainants were yet infants, and they, with their widowed mother, were in pos-
27 session of, and living upon, the premises, their maternal grandfather, who was also living thereon with them, and administering the said estate for them, fraudulently entered into a conspiracy with one of the respondents, and secured a "posesorio," and later, while they were still minors, a "dominio," ownership or title in his own name to said land, and procured the inscription or recording of each of the same in the proper registry of property, and thereafter transferred the land to such respondent, who, in turn, thereafter transferred it to the remaining respondents, but that the latter, and in fact, all of the respondents, at all times, had full and complete knowledge of the rights of these present complainants, and knowingly and fraudulently entered into such conspiracy to so deprive them of their property, and did in pursuance thereof, thus secure the legal title thereto and oust and eject complainants from the same, and have ever since deprived them of the possession, use, and enjoyment thereof.

Complainants also allege that they are brother and sister, and, practically speaking, have recently come of age, and therefore bring their bill to assert their rights in the premises.

In substance, they pray that the property be held to be subject to their interests, and that the respondents be obliged to discover all the applications, petitions, alleged titles, descriptions, rights, registrations, transfers, etc., by which they, the respondents, pretend to hold or have title to the property in question, and that each and all of the same be cancelled of record and held for naught, and the complainants be fully vested with the complete legal title thereto; and that the same, by order of court, be inscribed in their names in the proper registry of property; and further, that respondents be obliged to account for the mesne profits of the said land since the fraudulent and wrongful taking of the same, as alleged, and that they have general relief in the premises.

28 Thereafter, on February 23rd and 24, 1910, this equity cause came on for trial on the merits before the Court alone without the intervention of an examiner or master, when all the evidence was heard orally, exhibits introduced and the case argued orally and submitted. Since that time counsel for the respective parties have filed elaborate arguments and briefs, all of which we have examined with care. We have also gone over the exhibits

which are numerous, and have read a transcript of all the evidence that was taken in the suit at law before it was dismissed, and in addition have verified the statements of counsel in their briefs as to the evidence in this chancery suit by our own recollection of it and by causing the stenographer to read large portions of his notes thereof to us. From the knowledge thus gained of the facts surrounding the controversy, we can state the proofs to have established the following facts:

That complainants did in fact inherit the land in controversy through their father from their paternal grandfather who died as long ago as 1872 and who had owned and possessed it for many years, and that their father was in possession of it for several years before his death under a private division of the estate of the grandfather that had been made among his family. That on the death of complainant's father, their maternal grandfather Raimundo Morales took charge of the complainants and their mother, the former then being small children. That their mother in a year or two contracted a second marriage and that then complainants continued to live on the land in question with their mother and step-father. That shortly thereafter the step-father died, and somewhat later their mother, when their maternal grandfather, the said Raimundo Morales, again took charge of complainants who were still small children, and brought them to live at his own residence some ten kilometers away, and in addition took charge of this land for them, at times bringing one or the other of them for a short time to the land in question during the coffee picking seasons.

29 That in the year 1890 this maternal grandfather of the infants, with full knowledge of their rights, but in total disregard thereof, fraudulently appeared before an insular court and secured in his own name an order for a posesorio title to the land in controversy, which he caused to be duly inserted in the proper registry of property. That he thereafter sold it conditionally to a mercantile firm by the name of Perez, but afterwards bought it back and then sold it to the former respondent in this case, Camilo Taboas, but also under a conditional sale, which he failed to redeem within the time specified, but nevertheless Taboas gave him additional time in which to do so. That finally in about the year 1899, their said maternal grandfather again fraudulently and in contravention of their rights appeared in the municipal court of the district where the land was situated and by means of what were probably false witnesses, secured the conversion of his posesorio into a dominio title or certificate of ownership, also in his own name, which he in like manner caused to be duly inscribed in the registry, thus making his sale to Taboas appearently prima facie good. It was further proved that about this time Taboas, who was a merchant of considerable calibre, was indebted to the respondent firm of J. Ochoa y Hermano in the sum of about twenty-five thousand pesos provincial money, and that, wanting to reduce it, he went to said firm and told them of having this conditional deed for the land in controversy, which was accompanied by a note to him to

secure the amount due, which was something between #1500.00 and $2,000.00, and he tried to induce said firm to accept the conditional deed, mortgage or whatever it could be construed to be, as a credit against his debt, and represented to them that the same was good security. It is not quite clear why Taboas wanted this done, save perhaps to relieve some of his own other property because he had a large mortgage outstanding to said firm to secure the large debt he owed them. During the trial this maternal grand-
30 father Raimundo Morales came on the stand and confessed all of these doings and wrongs towards these children, and in the effort at an excuse for his action, stated that he had used the money he borrowed at different times largely for the benefit of his daughter, the mother of these children, and further, that when he heard that Taboas was about to transfer the debt to the respondent J. Ochoa y Hermano, he demurred and objected, for fear they would be harsh with him and might foreclose on him, and that then he told Taboas that the property in truth and in fact belonged to his grandchildren, and that he wanted to redeem it so as to turn it over to them. This witness also stated that he told some member of the respondent firm, he does not remember which, before he finally closed the trade with them, that the property did in fact belong to his grandchildren and that he had wrongfully obtained the posesorio and dominio titles thereto. At least that is the effect of his whole testimony.

Taboas also came on the stand as a witness in the case and stated that he did not know at the time he first received the property from Morales, that it really belonged to the children, but that about the time he began negotiations with the respondent J. Ochoa y Hermano, he told one of their number, Severo Ochoa, who at the time of the trial was absent in Spain, that it really did belong to the children and that for such reason the old man Morales would surely redeem it, etc., and that therefore it was first-class security. Under cross examination he also stated that this man Severo Ochoa asked him if there was anything on the record to show title outstanding in anybody except himself, the witness, and that he said there was not.

It transpired that the respondent firm of J. Ochoa y Hermano agreed to the transfer of the debt and the security, but to avoid any question, insisted that Taboas deed the land back to Morales and that the latter then give them a mortgage direct to secure Morales' note which had been endorsed to them by Taboas.
31 This was done, but the mortgage was not taken for nearly two years—until 1901, and then in 1903, Ochoa y Hermano insisting on it, he transferred to them the entire property in payment of the debt which then amounted to something over $2100.00. The respondent firm then went into possession of the property through an agent, none of them, so far as the record shows, ever having seen it, and they have been in possession of it ever since, but the evidence shows that they obtained little or nothing by leasing it, getting only some fifty dollars a year during the six or seven

years they have had it,—the tenants only sometimes paying the taxes, and that it is land devoted only to pasture.

The oral evidence as well as the large number of exhibits introduced showed that this property and several hundred cuerdas additional had been, as stated, in possession of the paternal grandfather of complainants for many years, he dying as an old man in possession of it in about the year 1872, and that complainants' father thereafter remained in possession of this particular tract, owning and cultivating it for some six or seven years before his death. And that the mother of complainants and the step-father remained thereafter in possession of it for several years up to the time of the death of the mother, when the maternal grandfather Morales went into possession of it as aforesaid and got the posesorio title thereto. There are three or four deeds to the paternal grandfather of complainants in evidence for about thirty cuerdas of land each, which it was claimed referred to this particular tract of land, but the identification of it is not very certain. However the possession of this particular piece in controversy was unquestionably proved as here stated.

Respondents J. Ochoa y Hermano, both in their answer and by their proofs, claim that they are innocent purchasers for full value of the tract of land in question and that they never had up to
32 within two or three days of the filing of the original suit at law any knowledge whatsoever of any rights of these infants in or to the same, that they took the same in the best of faith after causing a thorough investigation of the title, which appeared recorded in dominio ownership in the name of the said Taboas and afterwards in the name of the said maternal grandfather Morales, and therefore they contend that they should not be deprived of the property.

We are therefore confronted with a peculiar situation. Is it the intent of the mortgage law of Porto Rico that a dominio title duly recorded when no other record regarding that property appears in the registry, shall protect any purchaser thereof with or without notice of the rights of others thereto? In other words, must innocent infants who are defrauded by a relative be left remediless unless they can show knowledge previous to his purchase in any third party of their rights, and who purchases the property from some one who secured a fraudulent dominio ownership thereto in the courts?

We have heretofore decided, and we think we were right, that a person who buys such property with knowledge of another's rights is certainly not protected. See our decision in Pettingill v. Rios et al., ante page —. We do not think this holding in any manner affects our holding in the second appeal in Romeu v. Todd, 4 P. R. Fed. 445, now sub-judice in the Supreme Court of the United States, because that case turned upon entirely different facts with reference to the chancery rule of lis pendens.

As to the question of actual knowledge on the part of J. Ochoa y Hermano previous to their acquisition of the note or debt of Morales, which Taboas transferred to them, and of the making of the deed

to them for the property concerning which this litigation is pending, Morales himself testified in the suit at law, p. 46 transcript, that he did not know if that firm had any knowledge of the interest of the children in the land when he dealt with them, and that he
33 did not remember that he told them that. Yet in this equity suit he came into court and squarely testified that he did so inform one of the members of the firm, but could not remember who. After having seen this old man testify, and after having read his testimony as far as he gave it in the suit at law and having had the stenographer read most of his testimony in this suit to us, we unhesitatingly say that he is unworthy of belief, and therefore we leave his evidence in that regard out of the equation. We will confess though that we were astonished at the evidence of Mr. Taboas, when he squarely stated that he told Severo Ochoa of the respondent firm about this land belonging to the children, and, as the witness for the said firm who was present could give us no reason why Taboas so testified if it was not true, we were at a loss to account for it in any way unless it was true. We however have gone over the record and have ascertained the facts set out in the beginning of the statement aforesaid of this case, that this man Taboas was made a respondent in the equity suit, although he was not a defendant in the suit at law nor even in the equity suit as first filed, but that between the time of the filing of the amended bill by which he was made a party and the date of the trial, the cause was dismissed as to him. Therefore we can well see that his testimony may have been colored by the fact that he was thus relieved of possible liability with which he was threatened in the amended bill on November 11, 1908.

The only witness for the respondent firm was one Angel Gonzalez who was the attorney in fact for the firm for several years before he became a member thereof in 1905. He was the person who did all the transferring and attended to all the accounts between Taboas and J. Ochoa y Hermano. He seemed to remember all the facts distinctly, and he positively swore that he certainly never heard of the interest of these children in this land and that he is morally certain that he is the one who did all the business, and
while he could not say but what Taboas may have told the
34 absent member of the firm about it, yet he certainly did not think so because the firm were so careful in all their transactions. That in this instance they were so careful as that because the sale to Taboas was known to be a conditional one, they required it to be retransferred to Morales before they would even take a mortgage on it to secure their debt.

After mature consideration, we therefore hold that the complainants have failed in their proofs to show actual specific knowledge on the part of J. Ochoa y Hermano previous to this purchase as to any interest on complainants' part in and to the land in controversy.

We are also constrained to hold that the respondent firm of J. Ochoa y Hermano received this land without any actual and specific knowledge of any interest of complainants therein, and that in that sense they are innocent purchase-s for value, and the title

they secured was the apparent legal title of record. But there is another view of the case that we will refer to later. If it can be said in answer to this holding that it is repugnant to the conscience of a chancellor to say that a grandfather can in the manner developed by the facts here steal his grandchildren's property, for that is what it amounts to, and that they have no remedy after he records his fraudulent title and it gets into the hands of an innocent third party for value, our answer of course would ordinarily be that the remedy is with the law-makers and not with the court. We do have to say though, under what we think is the binding force of the decision of the Supreme Court of the United States in Romeu v. Todd, 206 U. S. 367, that a dominio title, which bears no evidence on its face as recorded showing its invalidity under article 37 of the mortgage law, and with no other title on record in that same new mortgage law registry about the property referred to, is the legal title, which protects innocent third parties. See also our decision in this same case, 4 P. R. Fed. 407 supra, also Compañia Gen-
35 eral de Tabacos v. Lopiño et al., 4 Philippine Reps. 33, Merchant v. Lafuente, 5 Id. 638. It is simply the fault of the law if persons situated like these complainants now that they are of age and can act for themselves ordinarily cannot recover the property. We do not think though that such fact would deprive them of their action against every person who took part in perpetrating the fraud against them, such as the witnesses their grandfather produced before the Court when he obtained the posesorio title, and the witnesses he produced before the court when he obtained the dominio certificate of ownership, and neither are we deciding as to what their remedy might be against this man Taboas who knew of their rights and yet aided their grandfather to put their property out of his hands and his and their reach.

Before referring to the other view of the case as referred to above, we might say that the mortgage law of Spain, which existed in the Peninsula for some thirty years previously, was modified and extended, together with its regulations, to Porto Rico and the Philippines in 1893. The law itself is an elaborate system of registration of property somewhat resembling what is known in several of the States of the Union as the Torrens law, save that it unfortunately does not provide a fund for the reimbursement of those who may be injured by its strict enforcement, and save that it was evidently passed in the interest of those lending money on mortgages rather than with any views of simplifying and protecting land titles as such. Under this law it was provided that all convevances or titles existing in the previous record books should be transferred within a limited time (one year) to the books wherein the registry under this new system was kept, in order to be valid against third parties. It also provided that persons having no written title of any kind, but who were in possession of land might before the proper tribunal, on presenting proper proofs and fulfilling certain requirements, secure a certificate of possession, or what has become known among the members of the bar here as a posesorio title, which we
36 have held (See Pares v. J. Reynes & Co., 2 P. R. Fed. 403) to be nothing more than notice to the world that the person

in whose favor it is issued is holding adverse possession of the property described. It also provided that after the holder of such posesorio title had thus been in possession of the property without successful attack against him for twenty years, he might apply to the proper court and after again fulfilling certain more elaborate requirements as to notice to the public and all adjoining land owners, etc., convert this possession into a certificate of dominio title or ownership, which appears to be the highest sort of title held to property in Porto Rico, and which we have held, as aforesaid, to be prima facie at least, the legal title to the land, and which, in the absence of any other or better recorded title, is supposed to be good against all the world.

Now it transpires that in this particular case, the conversion of the posesorio title which was secured in 1890, to a dominio title, took place only a little over eight years thereafter in 1899. One of the exhibits which is the dominio certificate itself, and which sets forth all of the proceedings that led up to it, shows that the posesorio thus ripened into a dominio title, or was by the court thus converted under and by virtue of a general Military Order issued from the Office of the Secretary of Justice under authority of Major General Guy V. Henry in command of the United States troops in Porto Rico during the military regime in 1899. The date of the order, which ordinarily should have the force of law, is April 4th of that year. The Order comprises some six sections, and in its scope amends, changes or repeals every conflicting article of the old civil code which was then still in force, and of the mortgage law and its regulations referring to the subject, and, among other things, shortens the period of limitation that must elapse between the date of a posesorio certificate or title, and the time of its conversion
37 to a dominio title or certificate of ownership, from twenty to six years. Its seventh section reads as follows: "This order shall have retroactive effect."

There is nothing in and about this military order which thus shortens the period of limitation as to existing rights, that gives anybody opportunity to assert their existing rights before it shall go into effect. It can be seen that in this particular case almost nine years of the twenty year period of limitation had already elapsed on the date of the issuance of this order, which by its own terms was to have immediate retroactive and prospective effect.

We find on examining the law that it has been held not only by the highest courts of most of the States of the Union, but by the federal courts as well, including the Supreme Court of the United States, that a statute cannot bar existing rights of claimants without affording them a reasonable time of sufficient duration to resort to the courts for the enforcement of the rights upon which the limitation is intended to operate. This it seems is the universal rule under the American flag, and is so because to do otherwise would be taking the property of citizens without due process of law. It would be tiresome for us to even partially review the number of cases in which this doctrine has been held. In the case of Price v. Hopkins, 13 Mich. 318, Judge Cooly stated the proposition in this

way: "It is of the essence of a law of limitation that it shall afford a reasonable time within which suit may be brought; * * * and a statute that fails to do this cannot possibly be sustained as a law of limitations, but would be a palpable violation of the constitutional provision that no person shall be deprived of property without due process of law."

In the case of Lamb v. Powder, etc. Co., 67 L. R. A. 563, the doctrine is laid down that whenever a new law or statute shortens a period of limitation, the question arises whether it is reason-
38 able. Many cases are cited in support of the proposition and the Court proceeds to say: "It is sufficient to say that all of them recognize the true rule to be that a limitation is unreasonable which does not before the bar takes effect, afford full opportunity for resort to the courts for the enforcement of the rights upon which the limitation is intended to operate, and that this opportunity must be afforded in respect of existing rights of action after they come within the present or prospective operation of the statute and in respect of prospective rights after they accrue." See 25 Cyc. 986 and cases cited. Also Terry v. Tubman, 92 U. S. 156, Terry v. Anderson, 95 Id. 632, Vance v. Vance, 108 Id. 514; McGahey v. Virginia,—In Re Brown, 135 Id. 664, Saranac Land, etc. Co. v. Comptroller, etc., 177 Id. 318; Wilson v. Isemiger, 185 Id. 63, Davis v. Mills, 194 Id. 451.

Therefore the question arises whether the general commanding the United States forces in Porto Rico during the time of the military regime in 1899, even though acting under the implied authority of the President of the United States as Commander in Chief of the Army, had power after the signing of the treaty of peace between the United States and Spain, which took place on December 10, 1898, previously, when acting concerning civil matters that were not a necessary war measure, to issue an order that would deprive any person of property without due process of law? Surely no commanding general of our forces at such a time in such a case, and referring to such a matter, has power to do anything that Congress itself could not do. To hold that the military commander has no such power in no manner, as we see it, detracts from the general plenary powers of the President as Commander in Chief of the Army and Navy regarding territory under our military control. See our opinion in Santiago v. Nogueras, 2 P. R. Fed. 468, as affirmed in 214 U. S. 260. We have several times cited in our decisions of causes arising in this island the statement of the Supreme Court of the United States in the Mormon Church cases, 136 U.
39 S. 44, and we think it has particular application as to the matter we are discussing, that:

"Doubtless Congress in legislating for the Territories would be subject to those fundamental limitations in favor of personal rights which are formulated in the constitution and its amendments, but these limitations would exist rather by inference and the general spirit of the constitution from which Congress derives all its powers, than by any express or direct application of its provisions."

It can be seen from what we have already stated that this military

judicial order, absolutely cut off all right from these complainants who were then infants, to assert their title to this property because it reduced the term of limitation from twenty to six years, all of which had elapsed some three years before. If the military commander was without power to do this, then the question arises, did the obtaining of a dominio title by Morales in 1899 give him any right other than he had before, and if the military order is void, did not these infant children under the mortgage law have the remainder of the twenty years, or eleven additional years, up to 1910 to attack the dominio title in question, which they did by filing the bill in this case in 1908 as aforesaid? Section 36 of the mortgage law specifically provides that: "Suits for rescission or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law." And section 37 provides that: "Exceptions to this rule are when the suit is for rescission or determination of title which is due to causes plainly expressed in the registry."

Now if this military order was absolutely void, and all the proceedings as to how the dominio title was obtained, were recorded, and showed that this void order was the basis for assuming that the title was good, which the respondent firm of J. Ochoa y Hermano say they looked to,—did they not, even though, as we have already held, they had no specific notice of complainant's rights, have actual ocular and constructive notice that the title they were buying failed for want of any law to support it?

40 We do not think it will do to say in answer to this that a dominio title is presumably the solemn judgment of a court and, when not appealed from, cannot be attacked collaterally, because these then infant complainants were not parties to the proceeding and had no notice of it, save by the meagre advertisement in the official gazette which the law required to bring in all unknown claimants. Moreover, if the judgment of the court is based on a statute or military order that was absolutely void, then the court was without jurisdiction to entertain the matter at all, and its judgment is a nullity, and can be treated as such collaterally as well as directly. 23 Cyc. 681 D., and cases cited.

It will of course be contended that those who failed to transfer their written evidence of title from the old annotadurias to the new registries at the time of the putting in force of this mortgage law, or within the time limit of one year thereafter, as provided in article 397 of the law, should have no standing in court, but after a thorough search in the mortgage law we fail to find that such omission would prevent anybody having a better title, even that of possession by inheritance, from attacking a person seeking a dominio certificate in the courts of the island. We gather from article 389 of the mortgage law that the omission to transfer records of title from the old anotadurias to the new registries was penalized only by a provision preventing courts from receiving the untransferred records in evidence against third persons who relied on the new registries. But it appears to us that an illegal or void registry would

be no registry. Therefore is not the position of these complainants as to this land the same as if no so-called dominio title had ever been obtained or recorded, and this respondent firm had purchased this land from their grandfather on his posesorio title only?

It is currently reported on the island here that General
41 Henry was not fully informed at the time he issued this judicial order, as to the necessity for issuing it, and that as soon as the people ascertained it was claimed such an order was in force, an uproar arose regarding it, and so on the adoption of the revised civil code in 1902, care was taken that sections 1840 and 1858 thereof were so worded as to, at least in most instances, render this objectionable six year period of limitation in-occuous, and restore the law as it had previously existed in the Spanish code. That the code in fact accomplished this was apparently held by the Supreme Court of the Island in Antuñano v. Registrar of Property, 1 (Castro) Decisiones de Puerto Rico, 407. But it appears that this did not, and could not help a case such as the one at bar, if the military order was valid, because the time had, as stated, long since expired at the date of the issuance of the order. It was suggested during the argument that section 8 of the Organic Act of Porto Rico, commonly known as the Foraker Law (31 Stats. 79) ratified the military order in question, but surely that cannot be, because not even Congress could ratify a law that it could not itself pass in the first instance. We are aware that this last statement, when referring to the power of Congress as to a territory or dependency, will give birth to a large question mark in the mental register of lawyers that see it, who are familiar with the rulings of the Supreme Court of the United States regarding the power of Congress over such jurisdictions. Especially will this be so in the light of the opening section of the Organic Act of the Philippine Islands, 32 Stats. 691. By that section all the previous acts of the President of the United States regarding the said islands and their government are ratified, but we submit that there is nothing in that section that attempts to ratify, or that intimates that anything was ever done in the Philippine Islands prohibited to all United States officers every-
42 where, such as, save in time of war, and out of military necessity, taking anybody's property without due process of law.

It was also suggested in argument that, as held in Perez v. Fernandez, 202 U. S. 80, and in Romeu v. Todd, 206 U. S. 358, the intent of Congress regarding Porto Rico was and is, in so far as the same may be consistent with the constitution and laws of the United States, to leave to the people the laws that they were accustomed to, but we submit this is not such a law. The inhabitants of Porto Rico were accustomed to a twenty year limitation in this regard, and to change it during the military government was, to say the least, an extraordinary proceeding. It was also forcibly urged that the whole intent of the mortgage law of Porto Rico, is to protect innocent purchasers of the duly recorded dominio title, and that this respondent firm was certainly in that position. All this may be admitted, but on the other side it was urged, as we think with equal force, that the object of all property laws should be to protect every-

body in their property rights. That it ought to be fundamental at all times that no person's property should be taken without due process of law, and that these infants certainly had their property taken from them without being given, as the law says they should have been, a reasonable time in which to assert their rights. In this regard it was also urged, and probably with reason, that because under the procedure necessary to obtain a dominio title under this mortgage law of Porto Rico no proper attention is paid to the "put upon inquiry" doctrine that applies to intending purchasers under the common law as to who is in possession of the property, no doubts should be resolved in favor of such procedure. Under this order, these infants then only about ten or eleven years old, were given no reasonable time at all in which to assert their rights. As to them the situation was and is almost the same as if this military order had specifically ordained that their property should be taken
43 from them and given to their grandfather without consideration, with the right in him to dispose of it as he chose. As stated, the order was issued April 4, 1899, and, as to these infants, the dominio could have been applied for the next day. It was in fact, after going through the shortened procedure, finally obtained only three months and fourteen days thereafter, on July 17th of that year, and only fifteen days notice was given in the official gazette under the terms of this military order. But even this short notice is not the worst feature as it refers to the proceedings for the dominio only. The fatal effect, as we see it, in the order itself is in that it did not give those who might be the real owners of property, as against mere posesorio titles that had already existed for six years, any time at all to bring ejectment or deshaucio proceedings as plaintiffs in the local courts to assert their rights. The municipal courts, where dominio proceedings could then be carried on, had jurisdiction only up to four hundred dollars, and as this land was worth much more, these children, even if they knew of the dominio proceedings, could not in the fifteen days notice given in the official gazette, come to San Juan, employ counsel and file such a suit.

We are informed that happily but few dominio titles were obtained under the military order in question, but even if there had been many, it would be no reason why these complainants should be deprived of their property save by due process of law. It may possibly be the case, and no doubt is, that at the time of the issuance of the order referred to on April 4, 1899, there were many persons improperly or even fraudulently holding posesorio certificates to land, in favor of whom the statute had yet from a few months to perhaps several years to run, and we can well see how it could be argued that the real owners had, notwithstanding the order, a reasonable time in which to assert their rights, and therefore, as the question is not before us, we are expressing no opinion as to what the position of the real owners of such property would be in now attacking a dominio title in the hands of innocent third parties.
44 We therefore hold that the military order referred to, of April 4, 1899, in so far as these complainants are concerned,

was, and is as to them null and void, and that they have proved their right to, and ownership of the property in question, and the respondent firm having shown no title thereto, because we hold that they received no title by their so-called deed under the alleged dominio title of Morales, the court which issued the certificate of dominio having been wholly without jurisdiction, they should recover the land described in the complaint, and that they are entitled to have the alleged title now standing in the name of the respondent firm of J. Ochoa y Hermano and the registry thereof cancelled as against them, and a proper decree in accordance with the bill and the views here expressed, and to put complainants into possession will be prepared for the Court's signature.

On the whole case the proofs show that respondents have made no profit out of the possession of the land, and that it had little or no rental value, so besides depriving them of the land, no damages will be allowed and only the costs of the suit will go with the decree. However, as this decision is a very important one and as the rights of the parties turn on the application of the constitution of the United States to the facts, all facilities for an appeal will be allowed if applied for.

(Signed) B. S. RODEY.

45 *Final Decree.*

(Filed April 14, 1910.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

In Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES, Suing With Her Husband, Francisco Morales y Hernandez, and Eufemio Hernandez y Morales, Complainants,

vs.

J. OCHOA Y HERMANO et al., Defendants.

Final Decree.

This case was thence continued from Term to Term until this present Term, when, to-wit, on the 23- day of February, 1910, the same came on to be heard upon the pleadings, evidence adduced by the parties and argument of counsel, and the court being fully advised in the premises finds:

I.

That the plaintiffs inherited the land in controversy through their father from their paternal grandfather, who died in the year 1872 or thereabouts, and who had owned and possessed it for many years; that their father was in possession of it for several years under a private division of the estate made among his family. That

the land in question is a piece and parcel of land situate in the barrio Nuevo, jurisdiction of Naranjito, and bounded and described as follows:

"Rural:—An estate with a dwelling-house, situated in the barrio "Nuevo, Jurisdiction of Naranjito, composed of one hundred and "six cuerdas (106 cuerdas), equivalent to forty-one (41) hectares, "sixty-six (66) areas, and twenty-two (22) centi-areas; Bounded: "on the East by the lands of Doña Maria de Jesus Morales, Lorenzo "Cintrón Cuevas, Aniceto Cintrón Vasquez, Justo Cintrón Cuevas, "Canuto Cintrón y Cintrón; on the North by the lands of Celestino "Ortiz Navarez and of Maria Jesus Rodriguez; on the West by the "lands of José Perez Rivera, Maria Encarnacion Hernandez y "Morales; and on the South by the lands of Fermin Morales y "Rivera."

46 which said land is to-day, on account of the transfer of some of the lands owned by the adjacent property owners, as well as because of the death of others, bounded as follows:

"On the North by the lands of Andrés Gonzalez Canton and "Amalia Ayala; on the East by the lands of Juan Angel Maldonado, "Justo Cintrón and Canuto Cintrón; on the South by the lands of "Alfredo Archilla, and on the West by the lands of Alfredo "Archilla."

II.

That on the death of the plaintiffs' father their maternal grandfather, Raimundo Morales, took charge of the plaintiffs and of their mother, the plaintiffs being then small children. That their mother, after a year or two, contracted a second marriage and that the plaintiffs continued to live on the land with their mother and stepfather. That shortly thereafter the step-father died and somewhat later the plaintiffs' mother; whereupon their maternal grandfather, Raimundo Morales, again took charge of the plaintiffs, who were still small children, and brought them to live at his own residence about ten kilometers away, and in addition took charge of their land for them, at times bringing one or the other of them for a short time to the land in question during the coffee-picking season.

III.

That in the year of 1890, Morales, the maternal grandfather of the plaintiffs, with full knowledge of their rights but in total disregard thereof, fraudulently appeared before an Insular Court and secured in his own name an order for a "posesorio" title to the land in controversy, which he caused to be duly inscribed. That he afterwards sold it conditionally to a mercantile firm by the name of Perez, but afterwards bought it back under the condition and sold it to the former respondent in this cause, Camilo Taboas, but also under a conditional sale which he failed to redeem within the time specified; but, nevertheless, Taboas gave him additional time in which to do so. Finally, about the year 1899 the said maternal

grandfather of the plaintiffs again fraudulently, and in con-
47 trovention of their rights, appeared in the Municipal Court of the district where the land was situated and secured a conversion of his "posesorio" into a "dominio" title or certificate of ownership, also in his own name, which he in like manner caused to be duly inscribed in the registry. That about this time Taboas was indebted to the respondent firm of J. Ochoa y Hermano in the sum of Twenty-Five Thousand Pesos, Provincial money, and that wanting to reduce it he pursuaded the firm of J. Ochoa y Hermano to accept the conditional deed for the land in controversy, which was accompanied by a note to him to secure the amount due, which was something between Fifteen Hundred and Two Thousand Pesos as a credit against his debt, and represented to them that the same was good security. Thereafter, the said respondent firm J. Ochoa y Hermano agreed to the transfer of the debt as security, but insisted that Taboas deed the land back to Morales and that then the latter give them a mortgage direct to secure Morales' note which had been endorsed to them by Taboas. This was done; but the mortgage was not taken for nearly two years, until 1901, and then in 1903 Ochoa y Hermano, insisting on it, he transferred to them the entire property in payment of the debt which then with interest amounted to something over two thousand one hundred dollars. That the respondent firm then went into possession of the property by an agent and have been in possession ever since, but that they obtained little or nothing by leasing it, getting only some fifty or sixty dollars a year during the six or seven years they have had it, the tenants only sometimes paying the taxes and that it is land devoted only to pasture.

IV.

That the said J. Ochoa y Hermano in buying the property did so without any knowledge of the fraud committed by Raimundo Morales and without any knowledge of the plaintiffs' rights to the property.

V.

That the Judicial Order promulgated in the Official Ga-
48 zette on April 7, 1899, reducing from twenty to six years the period during which property must be held in order to permit the conversion in the registry of a possessory title to a dominio title did not, when the six years had already elapsed prior to the promulgation of the said Judicial Order, give a reasonable time to a party claiming a right in the property to substantiate his rights in the usual manner, and did thus limit the statutory period of prescription to such an unreasonable extent that it in effect tended to deprive these plaintiffs of their property without due process of law, and therefore to that extent, and in this case, the said Judicial Order was and is null and void and of no effect; and that therefore the defendant firm, J. Ochoa y Hermano, received from Raimundo Morales, the maternal grandfather of the plaintiffs, nothing more than a "posesorio" title which is only evidence that the possession was or is in the person who inscribed it.

VI.

That the said firm of J. Ochoa y Hermano therefore received nothing more than a "posesorio" title from the said Raimundo Morales, which is in effect nothing more than the possession of the land recorded in their favor and is not good against the title and rights of the plaintiffs, Ana Maria Hernandez y Morales and Eufemio Hernandez y Morales.

VII.

That the defendants, J. Ochoa y Hermano, have received no substantial financial benefit from the use of the said property during the period in which they have been in possession thereof.

VIII.

And thereupon in furtherance of the declarations aforesaid, it is ordered, adjudged and decreed:

That the said property herein described belongs to the plaintiffs, Ana Maria Hernandez y Morales and Eufemia Hernandez y Morales; that they are the legal owners thereof by inheritance and are entitled to the immediate possession thereof as against
49 these defendants; and that the defendants J. Ochoa y Hermano have been merely holding the property adversely to them and against there better rights and title.

IX.

And it is further ordered, adjudged and decreed: That the said defendant firm, J. Ochoa y Hermano, do immediately deliver the possession of the said property to the plaintiffs; that all the entries in the registry of property of San Juan, of "dominio" and "posesorio" title by or in favor of the said defendant firm, J. Ochoa y Hermano, and that all entries of "posesorio" or "dominio" title in the said registry of property as against these plaintiffs be cancelled as against them. And it is ordered and adjudged: that a copy of this Decree be sent to the registry of property of San Juan, and that the registrar of property make the necessary entries and cancellations in conformity herewith so that there may appear of record no entry against the rights and interests of these plaintiffs; and it is further adjudged and decreed that these plaintiffs have been in the legal possession of the property from and after the death of their father, about the year 1872, and that their father before them was in the legal possession of the property up till the time of his death having inherited the property from his parents who had been the owners of it for many years.

Done and Ordered at San Juan, Porto Rico, this 14 day of April, A. D. 1910.

(Signed) B. S. RODEY, *Judge.*

50 *Petition of Appeal.*

(Filed April 18, 1910.)

In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIA HERNANDEZ Y MORALES

vs.

SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, and ANGEL GONZALEZ, Partners, Doing Business Under the Firm Name and Style of J Ochoa y Hermano.

Petition of Appeal.

The defendants, Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzalez, partners, doing business under the firm name and style of J. Ochoa y Hermano, conceiving themselves aggrieved by the Final Decree heretofore made and entered by this court in this cause, on the 14th day of April, 1910, whereby it was ordered, adjudged and decreed that the equity of said cause was and is with the complainants and against the defendants; and whereby it was further ordered, adjudged and decreed that the title of the said defendants in and to the lands described in the Bill of Complaint herein, as said title appears registered in the registry of property, is null and void and that said defendants, as such partners aforesaid, are not the owners of and are not vested with the "dominio" title in and to the said lands; but that the complainants herein are vested with the title to the said lands and are entitled to the possession of the same as against these defendants; do hereby appeal from said Order and Decree of the 14th day of April, 1910, to the Supreme Court of the United States for the reasons specified in the assignment of Errors to be filed herein, and they pray that this their petition of appeal may be allowed and may operate as a supersedeas upon the giving of a bond in the sum to be fixed by the court, and that a transcript of the record, proceedings and papers upon
51 which said order and decree was made, duly authenticated, may be sent to said Supreme Court of the United States.

Dated, this 18th day of April, 1910.

(Signed) T. D. MOTT, JR.,
Solicitor for said Defendants.

52 *Assignment of Errors.*

(Filed April 18, 1910.)

In the United States District Court for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIA HERNANDEZ Y MORALES

vs.

SVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, and ANGEL GONZALES, Partners, Doing Business Under the Firm Name and Style of J. Ochoa y Hermano.

Assignment of Errors.

Now come Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, defendants and appellants in the above entitled cause, and assign the following as errors committed by the court aforesaid in the course of the proceedings in said cause in this court:

I.

The court erred in overruling the demurrer interposed by defendants to the Bill of Complaint filed by complainants in said cause.

II.

The court erred in holding and deciding that complainants did not and have not a plain, adequate and complete remedy at law for the cause of action set forth in the Bill of Complaint.

III.

The court erred in holding and deciding that it had and has jurisdiction over and concerning the matters set forth in the Bill of Complaint herein, and to try, decide and determine the same.

53 IV.

The court erred in holding and deciding that equity had and has jurisdiction over and concerning the matters set forth in the Bill of Complaint herein, and to try, decide and determine said matters.

V.

The court erred in assuming and taking jurisdiction over and concerning the matters set forth in the Bill of Complaint, herein, and in proceeding with said cause and entering a final decree therein.

VI.

The court erred in holding and deciding that the defendants acquired no title to the lands described in the complaint by the deed to them in the year 1904 from Morales and his wife, and by the recording of said deed.

VII.

The court erred in holding and deciding that the whole of the Judicial Order dated April 4, 1899, and promulgated in the Official Gazette under date of April 7, 1899, is null and void, said Judicial Order being more fully described in paragraph marked five of the final decree herein.

VIII.

The court erred in holding and deciding that the whole of the Judicial Order of April 4, 1899, and more fully described in the preceding Assignment No. VII, is null and void, and is in contravention of the "due process of law" clause of the Constitution of the United States and the provisions of Section 1, Article 14 of the Amendments to the Constitution of the United States, and also Article 5 of said Amendments.

IX.

The court erred in holding and deciding that Paragraph 3 of the Judicial Order of April 4, 1899, and promulgated in the Official Gazette April 7, 1899, and more fully described in Paragraph 5 of the final decree herein, is null and void, and that the same is in contravention of the terms and provisions of Section 1, Article 14 of the Amendments to the Constitution of the United States and of Article 5 of said Amendments.

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X.

The court erred in holding and deciding that Paragraphs 2, 4, 5 and 6 of said Judicial Order dated April 4, 1899, are null and void, for the reasons specified in the preceding Assignment No. IX.

XI.

The court erred in holding and deciding that Paragraph No. 7 of said Judicial Order of April 4, 1899, is null and void for the reasons specified in Assignment No. IX.

XII.

The court erred in holding and deciding that the title of Morales in and to the lands described in the Complaint, as the same was recorded or inscribed in the registry of property, carried on its face the evidence of its nullity, and the said record was constructive notice to defendants of the nullity of said title.

XIII.

The court erred in holding and deciding that the title of these defendants and appellants in and to the lands described in the complaint is not protected and perfected by the provisions of the First Paragraph of Article 34 of the Mortgage Law of Porto Rico.

XIV.

The court erred in holding and deciding that the record or inscription of the title of ownership by Morales in and to the lands described in the complaint is null and void respecting these defendants and appellants.

XV.

The court erred in holding and deciding that complainants are the owners and entitled to the possession of the lands described in the complaint.

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XVI.

The court erred in holding and deciding that defendants are not the owners and are not entitled to the possession of the lands described in the complaint.

XVII.

The court erred in making and entering its final decree in this cause in favor of the complainants and against the defendants and appellants.

XVIII.

The court erred in holding and deciding that the deed secured by the defendants in 1904 from Morales and his wife whereby the latter sold to the former the lands described in complaint, is null and void and that neither such deed nor the recording of the same in the proper registry of property conferred upon the said defendants title to said lands.

Wherefore these defendants pray the Honorable the Supreme Court of the United States to examine and correct the errors assigned, and for the reversion of the final decree of the said District Court of the United States for Porto Rico entered in the above entitled cause, or of so much thereof as adjudges and determines that the defendants are not the owners and are not entitled to the possession of the lands described in the Bill of Complaint.

And as in duty bound they will ever pray.

(Sign-) T. D. MOTT, JR.,
Solicitor for Plaintiffs in Error,
Defendants in Lower Court.

56 *Bond on Appeal.*

(Filed April 19, 1910.)

In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIO HERNANDEZ Y MORALES

vs.

SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, and ANGEL GONZALEZ, Partners, Doing Business under the Firm Name and Style of J. Ochoa y Hermano.

Bond on Appeal.

Know all men by these presents: That we, Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, as such partners and as principals, and Pio Perez and Adolfo Valdes, as surities, are held and firmly bound unto Ana Maria Hernandez y Morales and Eufamia Hernandez y Morales, jointly, their executors, administrators and assigns, in the full and just sum of five thousand dollars ($5000.00) for the payment of which, well and truly to be made, — do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of April, 1910.

Whereas, lately at a session of the District Court of the United States for Porto Rico in a suit pending in said court between said Ana Maria Hernandez y Morales and Eufemia Hernandez y Morales, as complainants, and Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, as defendants, a decree was rendered against the aforesaid defendants, and said defendants having obtained from said court an order dated April 18th, 1910, allowing an appeal, as partners aforesaid, to the Supreme Court of the United States to reverse the aforesaid decree entered as aforesaid, in which order allowing the said appeal, the appeal bond of the de-
57 fendants was fixed at the sum of five thousand dollars.

Now, the condition of the above obligation is such, that if the said Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano as aforesaid, shall prosecute their appeal as such partners to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) J. OCHOA Y HERMANO,
By ANGEL GONZALES. [SEAL.[
PIO PEREZ. [SEAL.]
ADOLFO VALDÉS. [SEAL.]

Acknowledged before me this 19th day of April, 1910.

(Signed) JOHN L. GAY,
[SEAL.] *Clerk U. S. Court.*
By A. AGUAYO, *D'p'ty.*

58 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Personally appeared before me the above named Pio Perez and Adolfo Valdes, surities, who, signed the foregoing bond, who after having been sworn by me in due form of law, depose, each for himself, and says that he is worth in visible property over and above all debts and obligations the sum of —— Dollars.

(Signed) PIO PEREZ.
ADOLFO VALDES.

Subscribed and sworn to before me this 19th day of April, 1910.

(Signed) A. AGUAYO,
D'p'ty Clerk U. S. Court.

Sufficiency of sureties on the foregoing bond approved this 19th day of April, 1910.

(Signed) B. S. RODEY, *Judge.*

59 *Order Allowing Appeal.*

(Filed April 18, 1910.)

In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIA HERNANDEZ Y MORALES

VS.

SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, and ANGEL GONZALES, Partners, Doing Business under the Firm Name and Style of J. J. Ochoa y Hermano.

Order Allowing Appeal, etc.

The defendants, Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, by their counsel having on the 18th day of April, 1910, filed their Petition of Appeal in this cause, it is now hereby ordered; that an appeal to the Supreme Court of the United States from the order and decree made and entered herein on April 14th, 1910, be, and the same hereby is, allowed to said defendants; and that a certified transcript of the record and all proceedings herein upon which said order and decree was made be

transmitted to said Supreme Court of the United States, but that time for filing such transcript shall be enlarged until the 1st day of July 1910.

It is further ordered: that the bond on appeal be fixed at the sum of Five thousand (5000) Dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal, and that said bond may be filed within sixty days from the date of the final decree herein, and may be approved by the Court.

Dated at San Juan, Porto Rico, this 18th day of April, 1910.

(Signed) B. S. RODEY, *Judge.*

60 *Findings of Fact and Conclusions of Law.*

(Filed May 9, 1910.)

In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIA HERNANDEZ Y MORALES

vs.

SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, and ANGEL GONZALES, Partners, Doing Business under the Firm Name and Style of J. Ochoa y Hermano.

Findings of Fact and Conclusions of Law.

A final decree in favor of complainants and against the defendants having been heretofore rendered in this cause, and the defendants, Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, having as such partners entered their appeal from said final decree to the Supreme Court of the United States, this Court now here, upon application of said appellants, makes the following Findings of Fact upon which it based its said final decree:

I.

That José Maria Hernandez, the paternal grandfather of complainants, was at the time of his death, in the year 1872, the owner and in possession of a tract of land in which was included the land described in the Bill of Complaint, to wit, a parcel of land of one hundred and six (106) acres, more or less; that, however, the title of said José Maria Hernandez to the said one hundred and six acres was never recorded, but upon his death in 1872 his son, Juan Hernandez, became by inheritance from his said father the owner of said one hundred and six acres, more or less, and entered into possession of the same and so remained in such possession as owner until his death in the year 1887. That however, the title of the

said Juan Hernandez to the said one hundred and six acres,
61 more or less, was never recorded and does not now appear on record. That the said José Hernandez left surviving him, in 1887, two children, these complainants, and also a widow, mother of these complainants. That the said mother died in the year 1906 and these complainants, being still minors, became the sole owners of said tract of one hundred and six acres, more or less, by virtue of their inheritance of the same from their father, the said Juan Hernandez, but that the title of said complainants to said land has never been, and is not now recorded.

II.

That in the year 1890 the title to the said tract of land, described in the complaint, did not appear of record in favor of any person or individual either in the books of the present or modern registry or in the books of the old registry or the ancient "anotadurias," or "contadurias." That thereafter, in the said year 1890, Raimundo Morales, the maternal grandfather of complainants, fraudulently representing himself to be the owner of said land, appeared before the Municipal Court of Naranjito an Insular court, and by virtue of certain ex parte proceedings obtained from said court a decree declaring him to be entitled to the possession of said land without prejudice to third parties who might show a better right to such possession. That the possessory title so obtained was duly recorded or inscribed in the proper registry of property in the said year 1890, and the same was the only title to said land which then appeared recorded or inscribed in the registry of property.

III.

That thereafter, to wit, in the year 1899, or about nine years after the recording of the said possessory title in his favor in the proper registry of property, complainants being still minors the said Raimundo Morales again appeared before the same Insular Court and petitioned the same that it decree the conversion of the said possessory title, or entry of possession in the registry, into a record of ownership (titulo de dominio). That said petition and the
62 proceedings had thereon in the said Insular court were based upon the provisions of the Judicial Order dated April 4, 1899, and promulgated in the Official Gazette of Porto Rico under date of April 7, 1899, and which Judicial Order is more fully described as reducing from twenty years to six years the period during which property must be held in order to permit the conversion in the registry of a possessory title to a dominio title. That thereupon such proceedings were duly had in the said Insular Court as were provided for in the said Judicial Order, and the said court in due time made and entered its decree whereby it was ordered that the entry of possession, or possessory title of the land mentioned in the complaint and which appeared in the registry recorded in favor of the said Raimundo Morales, be converted into a record of ownership or dominio title. That thereafter the said decree of the said Insular

court, ordering the conversion of the entry of possession, or possessory title, into a record of ownership, or dominio title, was duly recorded, or inscribed by Raimundo Morales in the proper registry of property in the year 1899, and after such inscription the dominio title in and to the said one hundred and six acres, more or less, described in the Bill of Complaint, appeared in the said registry and recorded solely in the name of the said Morales.

IV.

That thereafter, to-wit, in the year 1901, the said Raimundo Morales still fraudulently representing himself to be the true owner of the said one hundred and six acres, and while the dominio title in and to the said land still appeared recorded in his name, as set forth in Finding No. III; and, further, there not then appearing in the said registry any claim or right, or title, in, or to the said land by any other person or persons, mortgaged the same for value to these defendants who truly and in good faith believed him, the said Morales to be the owner of said one hundred and six
63 acres, and were entirely ignorant of the rights of these complainants in and to said lands. That the mortgage so executed in favor of these defendants was thereafter duly recorded in the proper registry of property in the year 1901.

V.

That thereafter, to-wit, in the year 1903, the said defendants, still being ignorant of the rights of these complainants in and to the said one hundred and six acres, and further, the dominio title to the same still appearing recorded in the proper registry in the name of said Morales; and further, the said Morales still appearing in the said registry as the only person possessing any rights or title in or to the said land, he, the said Morales, by deed duly executed before a notary public, and in which deed his wife joined, sold and transferred said one hundred and six acres to these defendants in payment of, and in full liquidation of the amounts due and secured by the mortgage described in Finding No. 4. That thereupon these defendants duly recorded the said deed in the proper registry of property in the said year 1903 these complainants still being minors and that upon the recording of the said deed these defendants appeared in the said registry as the only person, or persons having any right or title in or to the said one hundred and six acres. That said defendants by their agent immediately upon the purchase of the said lands as aforesaid, took possession of the same and have ever since and are now in the possession of said lands, and that the present value of said lands is in excess of five thousand dollars.

VI.

That all the transactions concerning the said one hundred and six acres between the said Morales and these defendants took place in the city of San Juan, Porto Rico, and that said land is distant from

said city and had never been seen by these defendants prior to their purchase of the same.

64 From the Facts above stated the court draws the following Conclusions of Law:

I.

That the Judicial Order dated April 4, 1899, signed by the then Secretary of Justice, Herminio Diaz, and approved by Major General Guy V. Henry, at that time military governor of Porto Rico, and which said Judicial Order was promulgated by publication in the Official Gazette of Porto Rico under date of April 7, 1899, and which said Judicial Order reduced from twenty years to six years the period during which real estate must be held in order to permit the conversion in the registry of a possessory title to a dominio title, is null and void because in contravention of the "due process of law" clause of the Constitution of the United States and of the provisions of Section 1, Article 14, of the Amendments to the said Constitution, and also of the provisions of Article 5 of said Amendments. That all proceedings had under said Judicial Order and particularly the proceedings mentioned in Finding No. III, for the conversion of the entry of possession (titulo posesorio) regarding the said one hundred and six acres into a record of ownership (titulo de dominio) in the registry of property, are null and void and of no effect. That the decree of the Insular court mentioned in Finding No. III, whereby the conversion in the registry of property of the entry of possession (titulo posesorio) regarding the said one hundred and six acres into a record of ownership (titulo dominio) was ordered, is null and void and of no effect because said proceedings were had and the said decree was entered under and by virtue of the said null and void Judicial Order.

II.

That at the time the mortgage mentioned in Finding No. IV and the deed mentioned in Finding No. V were executed in favor of these defendants the registry of property showed that the recording of the dominio title in and to the one hundred and six acres and which title then appeared in favor of the said Raimundo Morales, had been secured under and by virtue of the said Judicial Order of
65 April 4, 1899; and said record was therefore constructive notice to these defendants of the nullity of said title of dominio recorded as aforesaid.

III.

That by the deed executed in their favor in 1904 by Morales and his wife these defendants acquired only such rights in and to the one hundred and six acres as Morales then possessed; and that the latter's rights were at that time limited to the right of possession subject to be defeated by anyone showing a better right to such possession.

IV.

That by recording the deed obtained from Morales and his wife in the year 1904, which deed is more fully described in Finding No. V, these defendants were not and are not protected by the provisions of the first paragraph of Article 34 of the Mortgage Law.

V.

That complainants have shown a better right in and to the possession and ownership of the said one hundred and six acres than these defendants enjoy.

VI.

That by the deed of sale of 1904, whereby it was pretended to make over and transfer the dominio title to the one hundred and six acres by Morales and his wife to these defendants, no dominio title did in fact and in law pass to and in favor of these defendants and that the latter did not acquire any title of ownership in or to said one hundred and six acres by virtue of said deed dated 1904 from Morales and his wife, and that the recording of said deed by the defendants did not and does not in any way perfect their title in or to said land or in any wise aid or protect these defendants in or concerning said title.

VII.

That complainants are now the owners of said one hundred and six acres and entitled to the possession of the same, and that the defendants have no title of ownership in or to said land and are
66 not entitled to the possession thereof.

VIII.

That all the entries in the registry of property of "dominio" and "posesorio" title by or in favor of the said defendants, and that all entries in the said registry of property of "posesorio" or "dominio" title in or to said one hundred and six acres and against these plaintiffs should be cancelled and held of no effect.

IX.

That said complainants are entitled to a decree herein declaring them to be the owners of the one hundred and six (106) acres described in the bill of complaint and that they are entitled to the possession of the same; that all inscriptions of title in and to said lands, either posesorio or dominio, now recorded in the name of defendants, or any other person or persons not these complainants, be cancelled; but that complainants are not entitled to any damages either by way of mesne profits or otherwise, but are entitled to costs in this action.

The foregoing statement of facts in the nature of a special verdict. and the above conclusions of law having been submitted by counsel for the respective parties and approved by the court, the same is signed and certified at San Juan, Porto Rico, this 9th day of May,

1910, and the same with a copy of the Court's opinion in the case will be transmitted to the Honorable the Supreme Court of the United States according to law.

(Signed) B. S. RODEY,
Judge of the District Court of the United States for Porto Rico.

67 *Return of Service Writ.*

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Joseph Anderson, Jr., Attorney of Record, by handing to and leaving a true and correct copy thereof with him personally at San Juan, P. R., in said District on the 20th day of April, A. D. 1910.

H. S. HUBBARD,
U. S. Marshal.
JOHN L. HAAS,
Deputy.

68 In the District Court of the United States for Porto Rico.

Equity. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIA HERNANDEZ Y MORALES
vs.
SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA AND ANGEL GONZALES, Partners, Doing Business under the Firm Name and Style of J. Ochoa y Hermano.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Ana Maria Hernandez y Morales and Eufemia Hernandez y Morales, or Their Attorneys of Record, Joseph Anderson, Jr., Esq., and Henry F. Hord, Esq., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within sixty days of the date of this writ, pursuant to an order allowed and appeal duly entered and of record in the office of the Clerk of the District Court of the United States for Porto Rico, in that certain cause in equity in that court, No. 586, wherein Severo Ochoa, Victor Ochoa, José Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, are defendants and
69 appellants and you are complainants *are* appellees, to show cause, if any there be, why the order and final decree made

and entered therein against said defendants and appellants as in the said order allowing the said appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, and the seal of said court, this 18th day of April, A. D. 1910, and of the Independence of the United States the one hundred and thirty-fourth.

B. S. RODEY, *Judge.*

Attest:

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY, *Clerk.*

[Endorsed:] Equity No. 586. In the District Court of the United States for Porto Rico. Ana Maria Hernandez y Morales and Eufemia Hernandez y Morales vs. J. Ochoa y Hermano. Citation. Filed Clerk's Office, United States District Court, April 20, 1910. John L. Gay, Clerk of the Court, by A. M. Bacon, Deputy. Marshal's Fees, 1 service, $2.00. Expenses.

70 *Præcipe for Transcript of Record.*

(Filed June 6, 1910.)

In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES et al.

vs.

SEVERO OCHOA et al., as Partners Doing Business as J. Ochoa y Hermano.

To the Clerk of the above entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said Court and include in said Transcript the following pleadings, proceedings, orders and papers on file, to wit.

1. Original Bill of Complaint.
1a. Summons and Return.
2. Demurrer to the same.
3. Amended Bill of Complaint.
4. Journal entry dated Nov. 13, 1908, showing that the demurrer on file to the original bill is made to apply to the amended bill of complaint.
5. Order overruling demurrer; Journal entry Dec. 31, 1908.
6. Separate answer of J. Ochoa y Hermano.
7. Order dismissing bill as to Camilo Taboas dated Feb. 14, 1910.
8. Opinion of Court on merits, filed April 2, 1910.

9. Final Decree.
10. Petition on appeal.
Order allowing appeal.
Assignment of Errors.
Bond on Appeal.
Citation and return thereon.
11. Findings of Fact and Conclusions of Law.
12. Copy of Præcipe for Transcript of Record.

(Signed) T. D. MOTT, JR.,
Solicitor for Defendants.

71 In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES, Suing with Her Husband Francisco Morales y Hernandez, and Eufemio Hernandez y Morales

vs.

J. OCHOA Y HERMANO, a Partnership Composed of Antonio Perez y Fernandez, Victor Ochoa, José Ochoa, Severo Ochoa, Angel Suarez y Sobrino, and Camilo Taboas (Brought in by Amendment Nov. 11).

I, John L. Gay, Clerk of the District Court of the United States, in and for the District of Porto Rico, do hereby certify the foregoing seventy-one typewritten pages, numbered from 1 to 71, inclusive, to be a true and correct copy of the record and proceedings in the above entitled cause as the same remains of record in my office as called for by the præcipe of the appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this seventeenth day of June, A. D. 1910, at San Juan, Porto Rico.

[United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk, District Court of the United States for Porto Rico.

72 [Endorsed:] No. 586 Equity. In the District Court of the United States for Porto Rico. Ana Maria Hernandez y Morales et al. vs. Severo Ochoa et al., as partners doing business as J. Ochoa y Hermano. Record on Appeal requested by the defendant.

73 *Transcript of Record and Proceedings Requested by Appellee and Allowed by the Court, as Set Forth in the Order in That Regard under Date May 12th, 1910, Copy of Which Appears on Page 2 of This Record.*

THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a stated term of the District Court of the United States for Porto Rico, within and for the district aforesaid, begun and held

at the Court rooms of said Court in the city of San Juan, on the second Monday of April, being the eleventh day of that month, in the year of our Lord One Thousand Nine Hundred and Ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

Present—The Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico.

Among other were the following proceedings, to wit:

74 In the District Court of the United States for Porto Rico.

Equity. 586.

ANA MARIA HERNANDEZ et al.
vs.
J. OCHOA HERMANOS.

(*Journal Entry, May* 12, 1910.)

In this cause Joseph Anderson, Jr., solicitor for complainants, presents a list of exceptions as well as additional findings of fact, and moves for leave to have the same incorporated as part of the record. T. D. Mott, Jr., solicitor for respondents objects and after argument in that behalf the Court overrules the exceptions and denies the application to which action of the Court said solicitor for complainants objects and excepts.

Solicitor for complainants thereupon requests that the exceptions and findings so presented by him be transmitted with the record to the Honorable the Supreme Court and that he have leave at his own expense to incorporate in the record so to be transmitted such portions of the testimony as he may deem proper to support such additional findings, which request is granted and it is so ordered. To which the respondents by their counsel object and except.

75 (Filed May 12, 1910.)

In the District Court of the United States for Porto Rico.

Equity. No. 586.

ANA MARIA HERNANDEZ Y MORALES and EUFEMIA HERNANDEZ Y MORALES
vs.
J. OCHOA Y HERMANO et al.

Exceptions to the Finding of Law and Fact.

Now come the Plaintiffs herein, by their attorneys, Jos. Anderson, Jr., and Henry F. Hord, and except to the finding of law and fact heretofore presented in this case by the Defendants for use on

appeal of the said cause to the Supreme Court of the United States, on the following ground—to wit:

That it does not appear in said findings of fact that at the time that the Defendant-firm first received the agreement to mortgage from the maternal grand-father of these Plaintiffs, Raimundo Morales, that it was done at the instance of one Camilo Taboas, who was an agent for the Defendants in that transaction, and it was in fact a transfer of a part of a debt due by the said Raimundo Morales to the said Taboas, and from the said Taboas to the Defendant-firm of J. Ochoa y Hermano.

II.

That during this transaction the said Camilo Taboas was an agent of the said firm of J. Ochoa y Hmno. and did carry out the transaction for them, so that they might be further secured for the debt which the said Taboas owed to the said Defendant-firm by a transfer of a debt of Raimundo Morales, owing to Taboas, to the Defendant-firm.

76 III.

That thereafter, when the mortgage was actually given by the said Raimundo Morales to the said Defendant-firm, it was given as security for this said debt, then long past due.

IV.

That at the time of the alleged sale by the said Raimundo Morales to the said J. Ochoa y Hermano there was no new consideration passed, but the sale was made in payment of the alleged old debt and of the mortgage liability which Raimundo Morales owed to the Defendant firm.

Counsel for Plaintiffs states that the above is a statement of facts as they appear of record, and should be included in the statement certified by the Court, which request the Court having refused the Plaintiffs, by their counsel, duly take an exception.

San Juan, Porto Rico, May 11, 1910.

(Signed) JOSEPH ANDERSON, JR.,
HENRY F. HORD,
Per A.,
Attorneys for Plaintiffs.

77 In the District Court of the United States for Porto Rico.

No. 586. Equity.

ANA MARIA HERNANDEZ et al.
vs.
J. OCHOA Y HERMANO.

Certain Extracts from the Evidence Included in the Record by Complainants, by Special Permission of the Court.

Be it remembered that, on the 23rd day of February, 1910, and following days, this case coming on to be heard and Raimundo

Morales, the maternal grandfather of the complainants having been called to testify, after stating his name, that he was a resident of Naranjito, sixty-seven years of age, and had lived since he was born in Naranjito, testified further as follows:

Q. What was the first thing you did with reference to that property in the way of borrowing money on it or converting the title into a title of possession; what was the first thing you did?

A. I laid a mortgage in Bayamon.

Q. To whom?

A. To Don Felix Perez.

Q. Representing the property as your own?

A. Yes, sir; as my property.

Q. Was that a mortgage or what?

A. Yes, a mortgage.

Q. And what became of the property after that?

78 A. I paid to Don Felix Perez and he transferred it to the other Perez, Don Juan Perez.

The COURT: Go on now and tell us to the end what you did with that property.

A. I took it away from the Perez and transferred it to Camilo Taboas.

Q. And then what did you do?

A. It was then that Don Camilo tried to transfer my account. He transferred the deed to me and I kept it and afterwards it was conveyed to him.

Mr. ANDERSON:

Q. To who?

A. To Ochoa.

Q. You made a deed to the property then to Ochoa did you?

A. Yes, I conveyed it or made the conveyance in favor of Ochoa.

Q. Then having sold it to Camilo Taboas, you bought it back from him did you?

A. Ochoa wanted that the account which I had pending with Camilo to transfer it to them, so that instead of paying to Camilo, I became the debtor of Ochoa.

Q. And then you sold them the land, is that it?

A. Yes, sir; and then I transferred the property.

Q. Now when you sold it to Camilo Taboas in the first place, by what kind of a deed did you sell it; by a mortgage deed, a conditional deed or unconditional deed or how?

A. I don't remember that.

Q. But you bought it back from him you say?

A. No, from Camilo it went to Ochoa.

Q. Didn't Camilo sell it back to you?

A. Don Camilo made the conveyance to me.

79 Q. And then you transferred it to Ochoa, is that it?

A. Yes, and I then transferred it to Ochoa.

Q. Now at the time that you sold it to Camilo Taboas did you have any conversation with him with reference to who was the

real owner of that property and as to whether it belonged to your grandchildren or not?

Mr. MOTT: I object to that.
The COURT: The objection is sustained.

Q. At the time that you sold this property to Camilo Taboas, did you have any conversation with him about this property, and if you did, what?
A. I had a mortgage in favor of the Perez and that mortgage was to become due and then I went to Camilo so that he might pay the money and then I transferred the property to him.
The COURT: I see he has got to call his attention to it.

The COURT:

Q. At any time after you were dealing with this property as your own, did you tell anybody about the interest that these children had in it, and if so, who?
A. Yes, sir; I advised Camilo. I didn't want Camilo to execute the deed because I was trying to get the money to pay him off, and I also advised Ochoa that the property belonged to the minors and that I had to redeem it afterwards.

The COURT: That is a square statement.
Mr. ANDERSON: That is all.

Thereafter, two other witnesses having been examined, whose evidence is not material to the point that the complainants desire to bring out, Camilo Taboas having been called to the stand
80 and having testified that he lives in Bayamon, that he knows Raimundo Morales, that he had business with him during the years 1894 to 1904, or thereabouts, in coffee, wholesale, that he borrowed money and then returned it in coffee and that he had some dealings with him in regard to borrowing money which he secured by mortgage on two properties for four thousand pesos which he owed, in answer to the question: What were those two pieces of land about which you had business with him? he testified as follows:

A. Both were located in Naranjito, one of 200 and odd cuerdas and the other of 100 cuerdas, more or less. As his account was very heavy, I then suggested to him to transfer the largest property to the Banco Teritorial, which was done, to take it there; as that transaction was carried out with the bank, then there remained a balance of his account of 2600 pesos. Several years elapsed and I needed the money to pay to the firm of Ochoa. I then proposed to him to take his document to said firm, transferring also to said firm the guarantee which I had, the guarantee which he had given on the small property. I proposed that to the firm and at first they did not accept it, but they did so afterwards, and when they did not accept that at first I told them that that transaction or operation would not last long and that he wanted to redeem the property because it belonged to some grandchildren and he wanted to adjudicate it to them. Then I sent the promissory note endorsed to the house or the firm. A few months afterwards I received instructions or

orders from the Ochoa firm to execute the deed of Don Raimundo Morales without any incumbrances.

81 Q. You mean by that do you that you were authorized to make the resale under the condition of pacto de retro?

A. Yes, to redeed or deed again the property without any incumbrance.

The COURT:

Q. Did you do it?

A. Yes, I did it before a public notary.

Q. Was that the last thing you had to do with regard to the property?

A. Yes, that was the last thing I did in that matter.

Mr. ANDERSON:

Q. Do you know the piece that is in dispute in this case?

A. No, sir.

The COURT:

Q. Now, Mr. Taboas, are you sure that when you went to speak to Ochoas about transferring this mortgage to them, that you told them that while Mr. Morales had given you that property as security for a debt, that it really belonged to these children?

A. I told them what Don Raimundo Morales had told me.

Q. What did they say when you told them that?

A. He asked me if somebody else had a better right or title than myself; if the rights of any other parties appeared in the title besides my own.

Mr. MOTT:

Q. Then what did you say? Let us have the whole conversation.

A. I said no, because I had asked or consulted the matter with a lawyer, and that there was no other incumbrance but the one in favor of myself.

The COURT:

Q. Didn't Ochoa pay any attention at all to the fact that you told them that this land in conscience belonged to these children?

82 A. Not to have any doubt whatever in receiving the promissory note because he desired to redeem the property for the children; that he had great interest in adjudicating that property to certain grandchildren.

Q. Well, did you or not make it plain to Ochoa & Company that this land really was the children's or simply that he had the desire to get it for them?

A. I told them what he had told me; that it belonged to the grandchildren and that he wanted to redeem it to adjudicate it to them.

Mr. MOTT:

Q. You accepted a conditional sale from Mr. Raimundo Morales did you not?

A. Many years before.

Q. When he gave you that deed did he represent himself as the owner and sole owner of that land or did he mention anything to you about the minors?

A. At that time he didn't say anything about that to me. He made that statement to me when I intended to transfer his account.

Q. We haven't got his statement to you yet. So then when you accepted the conditional deed in the first place you believed that he was the sole owner of the property, did you not?

A. Yes, sir; always, and I enlarged his credit on that belief.

The COURT:

Q. You mean you enlarged the credit after you received the deed, on that account?

A. Yes, sir; I gave him more money.

Mr. ANDERSON: He had other properties too.

The COURT: Yes, I know there was a 200 acre tract there too.

83 Mr. MOTT:

Q. Did you have anything to do with his getting out his posesorio title?

A. Nothing, no intervention at all.

Q. Did you ever intervene in his getting out his dominio title?

A. No, sir.

Q. Did you make out any of the writings or documents that were used in those proceedings?

A. No, sir; I executed the deed in accordance with the documents which he produced to me.

The COURT: What is the date of his posesorio and his dominio?

Mr. MOTT: The dominio is June, 1899, and the posesorio is back about six or seven years from that. It is January, 1890.

The COURT: What was the date of the transfer to Ochoa?

Mr. MOTT: 1903.

Mr. ANDERSON: It was quite a while after the dominio was obtained.

Mr. MOTT: In 1894, Morales sold to Taboas conditionally and in 1899 Taboas returned to Morales. In 1901 it was mortgaged to Ochoa.

Q. Did you advise Mr. Morales to get out a posesorio title or a dominio title?

A. Never, nothing.

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, certify that the foregoing is a true and correct transcript of the parts of the record which it purports to be.

ARTHUR J. HARVEY,
Official Stenographer of the U. S. District Court for Porto Rico.

84 (*Plaintiff's Præcipe for Copy.*)

Filed June 17, 1910.

United States District Court.

No. 586.

ANA MARIA HERNANDEZ Y MORALES et al.

vs.

J. OCHOA Y HERMANO et al.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

John L. Gay, Esq., Clerk of said Court:

Please prepare a certified copy of the exceptions to the findings of law and fact filed by the plaintiffs herein on the 12 day of May, 1910, the judge's order thereon and a certified copy of the evidence of,—transcribed and certified by the court stenographer, which in accordance with the court's order plaintiffs are allowed to have included in the record.

HENRY F. HORD *by* AND
JOSEPH ANDERSON, JR.,
Attorneys for Plaintiffs.

85 In the District Court of the United States for Porto Rico.

No. 586. Equity.

ANA MARIA HERNANDEZ Y MORALES, Suing with Her Husband Francisco Morales y Hernandez, and Eufemio Hernandez y Morales,

vs.

J. OCHOA Y HERMANO, a Partnership Composed of Antonio Perez y Fernandez, Victor Ochoa, Jose Ochoa, Severo Ochoa, Angel Suarez Sobrino, and Camilo Taboas (Brought in by Amendment Nov. 11).

I, John L. Gay, Clerk of the District Court of the United States, in and for the District of Porto Rico, do hereby certify the foregoing twelve typewritten pages, numbered from 1 to 12, inclusive to be a true and correct copy of that part of the record and proceedings in the above entitled cause, as called for by the præcipe of the appellee, and as same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said Court, this seventeenth day of June, A. D., 1910, at San Juan, Porto Rico.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk District Court of the United States for Porto Rico.

86 [Endorsed:] No. 586, Equity. In the District Court of the United States for Porto Rico. Ana Maria Hernandez y Morales, et al., vs. J. Ochoa y Hermano. Record on Appeal requested by the appellee.

Endorsed on cover: File No. 22,244. Porto Rico D. C. U. S. Term No. 337. Severo Ochoa, Victor Ochoa, Jose Ochoa and Angel Gonzales, partners, doing business under the firm name and style of J. Ochoa y Hermano, Appellants, vs. Ana Maria Hernandez y Morales and Eufemia Hernandez y Morales. Filed June 28th, 1910. File No. 22,244.

Office Supreme Court, U. S.
FILED.
NOV 4 1912
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 92

SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, AND ANGEL GONZALEZ, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF J. OCHOA Y HERMANO, APPELLANTS,

vs.

ANA MARIÁ HERNÁNDEZ Y MORALES AND EUFEMIA HERNÁNDEZ Y MORALES, APPELLEES.

BRIEF FOR APPELLANTS.

T. D. MOTT, JR.,
Attorney for Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 92.

SEVERO OCHOA, VICTOR OCHOA, JOSÉ OCHOA, AND ANGEL GONZALEZ, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF J. OCHOA Y HERMANO, APPELLANTS,

vs.

ANA MARIÁ HERNÁNDEZ Y MORALES AND EUFEMIA HERNÁNDEZ Y MORALES, APPELLEES.

BRIEF FOR APPELLANTS.

Statement of the Case.

This suit was begun by the appellees on the equity side of the District Court of the United States for Porto Rico in the month of October, 1908, they claiming to be the owners of a certain piece or tract of land situated in the district of Porto Rico and alleged to be in the possession of the appellants, defendants below. The bill of complaint stated that the title of appellees to said land was based upon their

alleged inheritance of the same from their father, Juan Hernández, who died in the year 1887, and who, in his turn had inherited said tract from his parents, who had occupied and cultivated the same until their death, about the year 1872; that after the death of their father the appellees, together with their mother, continued to live upon the said property until appellants took possession of the same; that the maternal grandfather of appellees, one Raimundo Morales y Morales, had pretended during their minority to be the owner of and had secured a possessory title to said tract, and that in January, 1903, the said Morales had pretended to convey said property by public deed to the appellants, who knew that the said Morales had never been the owner of said land and that his title thereto was fraudulent and fictitious; that the acts of the said Morales and the appellants, in this respect, were in fraud of the rights of the appellees; and finally the bill prayed, among other things, that the said tract be decreed to be the property of appellees in full dominio; and the titles, of possession and of dominio, recorded in the name of Morales and of the appellants be ordered canceled and held for naught, as also their inscription in the registry of property; and that appellants be ordered to pay to appellees such sum as might be found to be a fair valuation for the rent and use of the said property during the period appellees had been deprived of the use thereof. The bill also prayed for general relief. (Printed Record, pp. 1-4.)

The defendants demurred to the bill of complaint, alleging, among other grounds for demurrer, that it appeared by the said bill that appellees had a plain, adequate and complete remedy at law concerning the matters in said bill set forth, and that therefore equity was without jurisdiction to hear and decide the same. (Printed Record, pp. 66-7.)

Later the appellees filed an amended bill, which was the same as the original bill, excepting that it added a new defendant, Camilo Taboas, and charged that the latter had conspired with the maternal grandfather, Morales, to deprive

appellees of their said property and convey it to the appellants. (Printed Record, pp. 8-11.)

The demurrer to the original bill was made to apply to the amended bill by proper order. (Printed Record, p. 12.) This demurrer having been overruled (Record, p. 12), the appellees duly filed their separate answer, setting forth their want of sufficient information upon which to base a belief concerning the allegations of the bill in respect to the possession and ownership of said tract of land by the grandparents and parents of appellees and the inheriting of the same by the latter, also the possession of same by appellees, and therefore denying all these matters; denying also all the charges of fraud or conspiracy or bad faith made against them by the bill in the purchase of said tract of land from the maternal grandfather, Morales, and alleging that they had purchased said land for value in the best of faith from the record owner thereof without notice, constructive or otherwise, of the claims of appellees and in total ignorance of the alleged rights of the latter in or to said land; that at the time of said purchase nothing appeared of record respecting these alleged rights or claims or to show that any one had any interest in said land other than Morales, the one who appeared in the registry as owner. (Printed Record, pp. 12-14.)

Upon motion of counsel for complainants the cause was later dismissed as to the respondent Camilo Taboas, the person who had been joined as defendant by the amended bill of complaint. (Printed Record, p. 14.)

The cause came on to be heard by the court upon the merits, and in due time the court filed an opinion (Printed Record, pp. 15-27) and entered a final decree in favor of the appellees and against the appellants. (Printed Record pp. 27-30.)

Appellants did not take, and now find no cause for stating, any exception to the facts as found by the court below (Printed Record, pp. 37-39). Indeed the case can not be

better stated than by quoting concisely these findings of fact:

It appears that José María Hernández, the paternal grandfather of complainants (appellees), was at the time of his death, in the year 1872, the owner and in possession of a tract of land, within which was included the land described in the bill of complaint; that, however, the title of said José María Hernández to said land was never recorded, but upon his death his son, Juan Hernández, became by inheritance from his said father the owner of the land described in the bill of complaint, entered into possession of the same and so remained in such possession, as owner, until his death, in the year 1887; that, however, the title of the said Juan Hernández to the said land was never recorded and does not now appear on record; that the said Juan Hernández left surviving him in 1887 two children, these complainants (appellees), and also a widow, mother of these complainants (appellees), which said widow having died in the year 1906 these complainants (appellees) thereupon became the sole owners of said tract of land by virtue of their inheritance of the same from their said father, but that the title of said complainants (appellees) to the said land has never been, and is not now, recorded. (Printed Record, pp. 37-38, finding of fact No. 1.)

That in the year 1890 the title to said tract of land did not appear recorded in favor of any person, or individual, either in the books of the present, or modern, registry, or in the books of the ancient *anotadurías* or *contadurías*. That thereafter, in 1890, Raimundo Morales, maternal grandfather of complainants (appellees), fraudulently representing himself to be the owner of said land, obtained from the proper court a decree granting him the possessory title to said land, which title was duly recorded or inscribed in the proper registry of property in 1890, and the same was the only title to said land which then appeared recorded. (Printed Record, p. 38, finding of fact No. 2.)

That in the year 1899, after due proceedings had before and in the proper court, the said possessory title of the said Morales to the said land was by the decree of the said court converted into a title of ownership, or dominio title. That the said proceedings and decree were based upon the provisions of the Judicial Order dated April 4, 1899, and promulgated in the Official Gazette of Porto Rico under date of April 7, 1899. That the title of ownership, or dominio, so obtained was duly recorded, or inscribed, by the said Morales in the proper Registry of Property in 1899, and after such inscription the dominio title in and to said land appeared in said registry recorded solely in the name of the said Morales (Printed Record, pp. 38, 39, finding of fact No. 3).

That in 1901 the said Morales, still fraudulently representing himself to be the owner of the said land and while the dominio title to the same appeared recorded in his favor and name, mortgaged, for value, said lands to the defendants (appellants), who in good faith believed him to be the owner of the same and were entirely ignorant of the rights of the complainants in and to said land, there not then appearing in the registry any claim or right or title in or to the said land in favor of any person other than the said Morales. That said mortgage was duly recorded in 1901 (Printed Record, p. 39, finding of fact No. 4).

That in 1903, the same conditions still obtaining in the registry with respect to the record title to said land and the rights or claims of any other persons other than the said Morales, the defendants (appellants), by proper deed, purchased from him the said land, they (appellants) still being, at the time of the said purchase, ignorant of the alleged rights of complainants (appellees) in or to said land, and making said purchase in entire good faith. That said deed was recorded in 1903 and that thereupon these defendants (appellants) appeared in the registry as the only person, or persons, having any right or title in or to said land, of which they immediately took possession and which they had

never seen prior to their purchase of the same. That the value of said land is in excess of five thousand (5,000) dollars. (Printed Record, pp. 39-40, findings of fact Nos. 5 and 6.)

Stated in its simplest terms the case is as follows:

Defendants (appellants), in entire good faith and ignorant of the claims or rights of other persons, purchased the land from the person who, at the time, was the record owner of the same and had the dominio title recorded in his name. This dominio title had been decreed to defendants' grantor by the proper court after proper proceedings based upon, and in virtue of, the provisions of the Judicial Order of April 4, 1899, all of which appeared in said dominio title as recorded. The question is simply one of law. Did defendants (appellants) acquire good title by their said purchase, even conceding that their grantor was guilty of fraud (of which they were ignorant and to which they were not parties) in obtaining his title and nothing appearing of record to show this fraud? The trial court in its final decree decided this question in the negative (Printed Record, pp. 27-30) for reasons explained in an opinion (Printed Record, pp. 15-27), and from this final decree this appeal has been prosecuted and the following errors are assigned. (Printed Record, pp. 32-34.)

Assignment of Errors.

First. In overruling the demurrer interposed by defendants to the bill of complaint.

Second. In holding that complainants did not have a plain, adequate, and complete remedy at law for the cause of action set forth in the bill of complaint.

Third. In holding as matter of law that the judicial order of April 4, 1899, or any part thereof, is null and void and is in contravention of the "due process of law" clause of

the Constitution of the United States and the provisions of section 1, article 14, of the Amendments to the Constitution of the United States, and also article 5 of said amendments.

Fourth. The court erred in holding that the constitutionality or unconstitutionality of the judicial order of April 4, 1899, was material to the decision of the issues in the present case.

Fifth. The court erred in holding that the provisions of article 5 and section 1, article 14, of the Amendments to the Constitution of the United States are, or either is, in effect in Porto Rico.

Sixth. In holding as matter of law that the title of defendants (appellants) in and to the lands described in the bill of complaint is not protected and perfected by the provisions of articles 34 and 36 of the mortgage law of Porto Rico.

Seventh. In holding as matter of law that the title of Morales in and to the lands described in the complaint, as the same was recorded or inscribed in the registry of property, carried on its face the evidence of its nullity, and the said record was constructive notice to defendants (appellants) of the nullity of said title.

Eighth. In holding as matter of law that the deed from Morales and wife to defendants, whereby the former sold to the latter the lands described in the bill of complaint, is null and void and that neither such deed nor the recording of the same in the proper registry of property conferred upon defendants title to said lands.

ARGUMENT.

I.

This court has jurisdiction of this appeal. The value of the land in dispute is in excess of $5,000 (Printed Record, p. 39, finding of fact No. 5).

Sec. 35, act April 12, 1900 (31 Stat. at L., 77, chap. 191), organic act of Porto Rico, commonly known as the Foraker Act.

The constitutionality of a law of Porto Rico has been brought in question, and both the constitutionality of such law and a right claimed thereunder have been denied. Irrespective of the amount in dispute, this court has jurisdiction of this appeal.

Sec. 35, act April 12, 1900.

Act March 3, 1885 (23 Stat. at L., 443, chap. 355; secs. 1, 2, U. S. Comp. Stat., 1901, p. 572).

II.

Complainants had a plain, adequate, and complete remedy at law, and equity was without jurisdiction in this cause.

The first two assignments of error raise the same question, and may therefore be considered together. The action is primarily a dispute about title to lands and properly triable at law. The complaint is in substance and effect an ejectment bill.

Lasacagre *vs.* Chapins, 144 U. S., 119.
Ellis *vs.* Davis, 108 U. S., 485.
Hibb *vs.* Babin, 19 How., 271.
Whitehead *vs.* Shattuck, 138 U. S., 151.

The question here presented can no longer be considered an open one in the Federal courts of the United States. The repeated adjudications of this court and of the inferior

Federal courts leave no room for discussion. Citations could be multiplied almost without end.

The bill herein in no respect differs from the bills of complaint in Hipp *vs.* Babin and Whitehead *vs.* Shattuck, above cited, and this case at bar is on all fours with those cases.

The bill nowhere recites that the title of complainants has been settled at law. Complainants allege the legal title to be in them; that they are out of possession and defendants in possession; that defendants claim legal title, but that the same is fraudulent and void, and pray the same be canceled. The bill thus utterly fails to show any equity under the decisions cited.

The discovery prayed for by the bill is not necessary to maintain the title of complainants; and if it was, such information could be just as well obtained in an action of ejectment.

Rev. Stats., sec. 724.
Ex Parte Boyd, 105 U. S., 647.
United States *vs.* Bitter Root, etc., Co., 133 Fed. Rep., 274.

Besides, the bill alleges that the title of defendants is recorded. Therefore all information concerning said title was accessible to complainants simply by inspecting the registry of property.

Nor are the allegations of fraud and prayer for cancellation of the title of defendants, and the record of same, and for rent and profits, sufficient to bring the case within the jurisdiction of equity.

Whitehead *vs.* Shattuck, 138 U. S., 151.
Hipp *vs.* Babin, 19 How., 271.
Smyth *vs.* N. O. C. & B. Co., 141 U. S., 656.
Scott *vs.* Neely, 140 U. S., 106.
Johnston *vs.* Corson Gold Mining Co., 157 Fed. Rep., 145.
McGuire *vs.* Pensacola City Co. *et al.*, 105 Fed. Rep., 677.
United States *vs.* Wilson, 118 U. S., 86.

We therefore respectfully submit that the trial court erred in overruling the demurrer of defendants to the bill of complaint and in not sustaining the same.

III.

The trial court erred in deciding that the judicial order of April 4, 1899, is unconstitutional or repugnant to article 5 and section 1, article 14, of the Amendments to the Constitution of the United States.

The argument under this head covers the third and fourth assignments of errors, and disposes also of the seventh error assigned.

The parts of said judicial order considered by the trial court and pertinent for consideration here are:

> "(1) Article 1957 of the Civil Code is amended to read as follows: 'Ownership and other property rights in real property shall prescribe by possession for six years, as to persons present and absent, with good faith and with a proper (*justo*) title.
> "(2) * * *
> "(3) Paragraph 6 of article 393 of the mortgage law is amended to read as follows: 'Entries of possession shall be converted into records of ownership when they have the following requisites: (1) that six years have elapsed since the date of entry; (2) that the conversion of the entry of possession be announced by means of a proclamation in the 'Official Gazette,' so that persons interested who consider themselves prejudiced thereby may object by bringing the proper action within the period of fifteen days; (3) that the periods mentioned in the preceding paragraphs having elapsed, there exists in the registry no entry or note indicating that the prescription has been interrupted.
> "(4) * * *
> "(5) * * *
> "(6) * * *
> "(7) This order shall have retroactive effect."

The periods fixed by article 1957 of the Civil Code thus amended were ten years as to persons present and twenty years as to those absent, and these periods were thus reduced by the first paragraph of this judicial order to six years as to persons present and absent. In other respects the aforesaid article of the Civil Code remained unchanged.

The amendment made by the third paragraph of said judicial order consists in reducing from twenty years to six years the time mentioned in article 393 of the Mortgage Law as necessary to have elapsed in order that entries of possession may be converted into records of ownership. In all other respects said article remains unchanged.

Now it so happened in the present case that Morales had had his possessory title to the land in dispute inscribed for more than six years when the aforesaid judicial order took effect, and he thereupon proceeded to convert such title into one of dominio, instituting for that purpose the proper judicial proceedings and otherwise complying with all the conditions prescribed by the judicial order. He was thus enabled to do almost immediately what he could not have done until almost fourteen years later under the law as it formerly had been. It is claimed that this change in the law failed to allow a reasonable time for appellees to assert their rights to the land before such amendment took effect, and that therefore such law is unconstitutional.

We shall consider separately the paragraphs of said order alleged to be obnoxious, for, to our mind, the first paragraph is entirely independent of all the others, excepting paragraph seven. By said first paragraph the Civil Code was amended, while the other paragraphs amended various articles of the mortgage law; besides, in its essence and nature, the former is distinct and entirely different from the latter.

The prescription mentioned in article 1957 of the former Civil Code of Porto Rico, and which is the same as section 1858 of the Revised Civil Code, is acquisitive or one that confers title. It does not cut off or affect the right of action.

The law of Porto Rico established two kinds of prescription, to wit, acquisitive and extinctive. By the first, rights are acquired; by the second, the right of action is cut off.

Title XVIII, chapters 1, 2, and 3, of the present Civil Code of Porto Rico; also, same title, same chapters, of the former Civil Code of Porto Rico.

The periods fixed by the former Civil Code of Porto Rico for the acquisition of title to land by prescription were 10, 20, and 30 years, under varying circumstances.

> "Ownership and other property rights in real property shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and proper (*justo*) title."
>
> Art. 1957, former Civil Code of P. R.

> "Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons, with the exception mentioned in art. 539."
>
> Art. 1959, former Civil Code of P. R.

These provisions have been incorporated without change in the Revised (present) Civil Code of Porto Rico. (See sections 1858 and 1860.)

The periods of ten and twenty years mentioned in the articles and sections just cited from both civil codes constitute "ordinary" prescription.

Art. 1940, former Civil Code of P. R.
Sec. 1841, Revised Civil Code of P. R.

It is to be especially noted that this "ordinary" prescription, in order to be effective, requires both good faith and proper (*justo*) title. Nor does either the former or the Revised Civil Code of Porto Rico leave us in doubt as to the

exact meaning of the terms "good faith" and "proper title," but both terms are clearly defined by both of said codes.

> "Good faith of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could convey his title."
> Art. 1950, former Civil Code of P. R.
> Sec. 1851, Revised Civil Code of P. R.

> "By proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question.
> Art. 1952, former Civil Code of P. R.
> Sec. 1853, Revised Civil Code of P. R.

> "The title for prescription (ordinary) must be true and valid."
> Art. 1952, former Civil Code of P. R.
> Sec. 1854, Revised Civil Code of P. R.

> "A proper title must be proven; it never can be presumed."
> Art. 1953, former Civil Code of P. R.
> Sec. 1855, Revised Civil Code of P. R.

According to both the former and the Revised Civil Codes of Porto Rico real actions with regard to real property prescribe after thirty years. This is the extinctive prescription.

Art. 1963, former Civil Code of P. R.
Sec. 1864, Revised Civil Code of P. R.

It is of the highest importance for a proper determination of the questions involved in this appeal that these two kinds of prescription (acquisitive and extinctive) be not confounded.

In Garcia *vs.* de los Angeles, 13 P. R. Sup. Crt., 74, the Supreme Court of Porto Rico says:

> "Prescription as a means of acquiring ownership must not be confused with prescription as a means of losing it; because for the acquisition of ownership,

> possession in good faith and with a proper title, for a period of six years, in the case of persons either present or absent, is sufficient in accordance with the provisions of general order of April 4, 1899, while to lose ownership by prescription—that is to say, for the extinguishment of the action—it is necessary that thirty years shall pass without the owner of the real property exercising his action."

And this distinction becomes more important when it is considered that the trial court treated the ordinary prescription mentioned by the Civil Code of Porto Rico and the judicial order of April 4, 1899, as a statute of limitations, as the term is understood in American jurisprudence, and decided that the principle sustained by the decisions of this and many other American courts, to wit, that a statute cannot bar existing rights of claimants without affording them a reasonable time to resort to the courts for the enforcement of the rights upon which the limitation is intended to operate, is applicable to the present case.

It were vain to quarrel with this principle; but we absolutely deny its pertinency or applicability to the case at bar. The condition of good faith and proper title required by the law of Porto Rico in order that ordinary acquisitive prescription may be effective serves, in our mind, to take such prescription outside the sphere comprehended by the term "statute of limitations" as the same is understood in American jurisprudence. True it is that time is one of the elements in such prescription, but it is not the only element, as occurs in a statute of limitations.

25 Cyc., 983.

This becomes more evident when we inquire in what manner the reduction in time made by paragraph one of the judicial order of April 4, 1899, affected the rights of appellees to assert any claim to which they believed themselves entitled with respect to the land in question. Unless Morales possessed the land in good faith and with proper

(*justo*) title he could not invoke the aid of paragraph first of said judicial order. If his possession was accompanied by good faith and proper title, then the allegations in the bill of complainants with respect to their title are not true and complainants are, in such a case, nothing more nor less than impostors. Surely it will not be contended that it is unconstitutional to close the doors of our courts to impostors, or that a person who has no property can be deprived of it "without due process of law." To put the case more concretely, either Morales had a proper title and acted in good faith or not. If he had such title and acted in good faith these appellees had no rights affected by paragraph first of said judicial order. If Morales did not have proper title and did not act in good faith, then the provisions of said paragraph first of said judicial order cannot affect any supposed rights of appellees to the lands in dispute. As a matter of fact, Morales held the land with neither good faith nor proper title. Therefore the possession for the period of six years did not give him title of ownership. It may not be amiss to explain here as to what is meant in the law of Porto Rico by the term "proper title." In many respects this term corresponds to that of "color of title" of American jurisprudence.

> "Proper title is one of the modes of acquiring title recognized by the law."
> Colon *vs.* Rosario, 16 P. R. Sup. Crt., 736.

> "Proper title is one that suffices to pass ownership—assuming that the grantor is the owner."
> *Ex parte* Wenar, 5 P. R. Sup. Crt., 317.

In other words, the law requires, for the purposes of ordinary prescription, that the person in possession of real property justify his possession by virtue of some title, which shall have been acquired by one of the modes recognized by the law as a means or manner of acquiring title. Such title need not be efficacious, for in such a case there would be no

need for prescription to validate or perfect it. But such title must have the appearances of validity, so that if the grantor has the power to convey, the title passed would be sufficient to pass the dominion, or ownership, of the property.

Manresa, Commentaries Civil Code of Spain, vol. 12, pp. 759, commenting on article 1940 of said Code and which is the same as article 1940 of the former Civil Code of Porto Rico and section 1841 of the Revised Code of Porto Rico.

Thus a title which pretends to have been acquired by purchase, by exchange, by inheritance, or by gift, etc., etc., is a "proper" (*justo*) title, because these are all means or methods recognized by the law as proper for transferring title from one person to another. The term "proper" refers to the manner of acquisition and not to the validity of the title.

We respectfully submit that the first paragraph of the judicial order of April 4, 1899, has no application to the present case and is not pertinent to the issues made up by the pleadings herein.

Besides this it is to be noted that prescription has not been pleaded as a defense by these appellants. Nor was such defense open to them under the terms of said paragraph first had they desired to invoke it, for their possession had not run six years when this suit was instituted. The possession of Morales having been in bad faith and fraudulent, none of the time during which it ran could be added to the term of the appellants in order to complete the six years required by said paragraph first.

Ex parte Municipality of Bayamón, 7 P. R. Sup. Crt., 145.

Appellants have rested their defense solely on the ground that they were innocent purchasers without notice and for value from the person who according to the registry appeared

to be, and was, the owner of the dominio title to the land, and that they had recorded their title so obtained. They claimed, and now claim, that their title so obtained and recorded was, and is, fully protected by the provisions of articles 34 and 36 of the Mortgage Law of Porto Rico, to which later fuller reference will be made.

This brings us to the consideration of paragraph third of the judicial order. Said paragraph is not a statute of limitations properly so called. It cut off no right of action on the part of any one. In the present case it permitted Morales to convert his possessory into a dominio title to the land in dispute and record the same. But neither this conversion nor this recording affected the rights of appellees.

The conversion, though the result of judicial proceedings, did not have the effect of *res judicata*, and did not bind any one who did not appear in said proceedings.

Calderón *vs.* García, 14 P. R. Sup. Crt. Dec., 407.
González *vs.* El Pueblo, 10 P. R. Sup. Crt. Dec., 458.

And even as to those who had so appeared and opposed the conversion sought by such proceedings, their rights could not be adjudged, or passed upon, in those proceedings, but such rights must be decided in an ordinary action of revindication. The court is limited in such proceedings of conversion to saying whether or not the petitioner has shown a right to the conversion asked for. It can not pass upon the rights of others.

Diaz *et al. vs.* Waymouth, 13 P. R. Sup. Crt., 317.
Paris *vs.* People of P. R., 5 P. R. Sup. Crt., 29.

From the foregoing it will be plain that the alleged rights of appellees concerning the land in question were not affected by the conversion proceedings whereby Morales converted his possessory title into a title of ownership, or dominion title. Nor did the recording of the dominio title by Morales cut off any of the alleged rights of these appel-

lees. If such title was fraudulent, it was liable to attack, even after registry, within any period short of thirty years after he had entered into possession of the land and while still recorded in his name, or in that of any other person, excepting an innocent purchaser without notice, or in the language of the civil law "a third party with good faith."

Abella *vs.* Antuñano, 14 P. R. Sup. Crt., 485.
Paris *vs.* The People of P. R., 5 P. R. Sup. Crt., 29.
Valdés *vs.* Valle *et al.*, 1 P. R. Sup. Crt., 75 (Spa. ed.).
González *vs.* El Pueblo, 10 P. R. Sup. Crt., 458.

In the first of these cases (Abella *vs.* Antuñano) the land was sold by the owner to two different persons, the second purchaser being aware of the first sale at the time he bought. He recorded his deed before the prior purchaser. In a suit to recover the land by the first purchaser, against the grantor and the second purchaser, the Supreme Court of Porto Rico, in giving judgment for the plaintiff, said:

> "He who acquires in bad faith land which has been sold twice can not invoke the character of third party so as to fortify his right by the recording of his deed."

The learned judge of the trial court in his opinion (p. 23, Printed Record) seems to consider paragraph third of the judicial order as creating a bar to the assertion by complainants of their supposed rights, and, in fact, the decision of the learned judge rested on the fact that this supposed bar took effect before the expiration of a reasonable time after the enactment of the law. We believe, however, that the decisions of the Supreme Court of Porto Rico above cited show clearly that paragraph third of the judicial order did not create any bar against complainants or have the effect of precluding them from resorting to the courts within a reasonable time for the enforcement of their supposed rights.

If neither the conversion of the possessory title into a dominio title nor the recording of such dominio title had this effect, then there is nothing in said paragraph third of the judicial order capable of producing it, for such conversion and recording are the only two results of said paragraph. If the proceedings for conversion of the possessory title of Morales into a dominio title were null and void because of fraud, the recording of such dominio title did not validate such proceedings or such title.

> "The record of instruments or contracts which are null in accordance with the law are not validated thereby."
>
> Article 33, Mortgage Law of P. R.

It is not to be overlooked that while the conversion of the possessory title into a dominio title took place in 1899 (pp. 28, 38), and the latter was duly recorded in the proper registry of property on the 17th day of August of said year (p. 13), yet it was not until June 1, 1901 (pp. 29, 39), that Morales mortgaged the land to these appellants and not until January 12, 1903 (pp. 39, 29), that he finally sold it to them. So that between the time of the conversion of the possessory into a dominio title and the execution of the aforesaid mortgage twenty-one and a half months elapsed. Supposing then that by its terms the judicial order was not to take effect until eighteen months after its enactment, would not the position of these appellees to-day have been exactly what it is so far as this property is concerned? If such period had been allowed before the taking effect of the judicial order, would these appellees have resorted to the courts for the enforcement of their alleged rights? Clearly not, unless it is assumed that prior to June, 1901, they were cognizant of the wrongdoing of their maternal grandfather and remained silent and permitted him to deceive innocent third parties into believing him to be the true owner of the land and deal with him as such. It is therefore difficult to see that these appellees can have any ground for complaint

against the judicial order we have been discussing. As to them it certainly worked no injury nor did it cut off any right.

Measured by this test, to wit, that appellees could have exercised their right of action against Morales after the latter had converted his possessory title into a title of dominion and had recorded such title, and that the exercise by appellees of such right of action was as ample and full after the recording of such dominion title by Morales as it was before such record, it must be clear that the aforesaid paragraph third of the judicial order of April 4, 1899, did not cut off any supposed right of appellees, and therefore said paragraph did not, and does not, violate the provisions of article 5, or of section 1, article 14, of the Amendments to the Constitution of the United States.

We contend that said paragraph No. 3 of the aforesaid judicial order, which provides for the conversion of entries of possession into records of ownership, is in no sense a statute of limitation. But, even if it be so considered for the sake of argument, we submit that such paragraph took away no remedy which these appellees possessed before its passage. This court has decided that a statute of limitation which takes away no remedy which the land owner had before its passage is not unconstitutional and is valid.

Turner *vs.* New York, 168 U. S., 90.

Saranac Land Co. *vs.* Comptroller of New York, 177 U. S., 318.

The judicial order of April 4, 1899, has been enforced in many cases by the Supreme Court of Porto Rico, although in such cases its validity or constitutionality was not questioned or involved.

Ex Parte Pinto, 6 P. R. Sup. Crt., 149.

Ex Parte Martinez, 6 P. R. Sup. Crt., 169.

Ex Parte Miner, 6 P. R. Sup. Crt., 261.

Ex Parte Sanfeliz, 6 P. R. Sup. Crt., 501.

Ex Parte Tarpia, 6 P. R. Sup. Crt., 509.

Ex Parte Colzada, 6 P. R. Sup. Crt., 531.

IV.

Do the provisions of article 5 and section 1, article 14, of the Amendments to the Constitution of the United States obtain in Porto Rico?

So far we have proceeded with our argument on the assumption that the provisions of article 5 and of section 1, article 14, of the Amendments to the Constitution are in force in Porto Rico. We frankly confess that, according to the view we take of the questions herein involved, it does not seem to us that it is necessary to discuss whether the aforesaid constitutional provisions do, or do not, obtain in Porto Rico. We are not aware of any decision of this court which directly determines this point, nor are we cognizant of any act of Congress which has made the Constitution, or any part of the same, extensive to Porto Rico; nor are we acquainted with any fact whereby the benefits of the Constitution have been extended to Porto Rico by the other departments of the Government of the United States, and that the Congress has tacitly, or otherwise, consented to such fact or act.

However, as the decree of the trial court herein cannot be affirmed without this court deciding that the constitutional provisions above mentioned do obtain and are in force in Porto Rico, we are content to leave this question with the court after making the following statement:

The judicial order of April 4, 1899, was a military order, promulgated during the occupancy of Porto Rico by the military forces of the United States, so that said order was previous to the act of Congress of April 12, 1900, which act extended civil government to Porto Rico, and ratified and confirmed all existing laws, military orders, etc., which at that time were in effect in Porto Rico, with some exceptions, which are not pertinent to the consideration of the present case.

Section 8, act of April 12, 1900.

V.

The trial court erred in holding as matter of law that the deed from Morales and wife to defendants, whereby the former sold to the latter the lands described in the bill of complaint, is null and void, and that neither such deed nor the recording of the same in the proper registry of property conferred title upon defendants or protected such title in them.

The argument under this heading covers the sixth and eighth errors assigned.

The law of Porto Rico applicable to a discussion and consideration of the errors thus assigned is as follows:

> "The record of instruments, or contracts, which are null in accordance with the law are not validated thereby."
>
> Art. 33, Mortgage Law of Porto Rico.

> "Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the registry, has a right thereto, shall not be invalidated with regard to third persons, after they have once been recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry.
>
> "Only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article 389." * * *
>
> Art. 34, Mortgage Law of Porto Rico.

> "Suits for rescission or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law."
>
> Art. 36, Mortgage Law of Porto Rico.

"Exceptions to the rule contained in the preceding article are:

"(1) Suits for rescission or determination of title which are due to the causes plainly expressed in the registry.

"(2) * * *"

Art. 37, Mortgage Law of Porto Rico.

"For the purposes of this law, those who have not participated in the recorded instrument or contract shall be considered as third persons."

Art. 27, Mortgage Law of Porto Rico.

We respectfully submit that the foregoing articles quoted from the Mortgage Law of Porto Rico fully protect the title of the appellants to the lands in question in the present case, and make such title invulnerable to the present attack upon it by the appellees.

Morales secured the possessory title to the lands in dispute in the year 1890, and recorded said title the same year (pp. 28 and 38 of Record). Morales secured the conversion of the said possessory title into a title of ownership or dominio in the year 1899, and recorded said dominio title the same year (pp. 29 and 38, 39 of the Record). The alleged title, claim, or right of appellees or any other person to the lands in dispute has never been, and is not now, recorded (p. 38 of the Record). In the year 1901 Morales mortgaged for value said lands to appellants. At that time Morales appeared in the registry as sole owner, and no claim, right, or title in or to said lands by any other person or persons appeared in said registry (p. 39 of the Record). In the year 1903 Morales sold said lands to appellants for value. He still appeared in the registry as the sole owner, and the record did not disclose any right, title, or claim by any other person or persons in or to said lands (p. 39 of the Record). Appellants recorded their title to said lands in the year 1903 (p. 39 of the Record). This suit was commenced October 12, 1908 (p. 1 of the Record).

During all these various transactions appellants acted in perfect good faith, truly believed Morales to be the sole owner of said lands, and were entirely ignorant of the alleged claims or rights of appellees (pp. 29 and 39 of the Record).

It is difficult to conceive of a case that more squarely fits into the protective provisions of article 34 of the Mortgage Law. With regard to the recorded title of ownership of Morales, the appellants are third parties. Morales appeared from the registry as the owner of the lands in dispute. The rights of appellees to said lands were not recorded and appellants were entirely ignorant of said alleged rights. The title of appellants was recorded before the institution of suit by appellees. Hence the conclusion is inevitable that appellants (third parties) in purchasing said lands from Morales contracted with the person who according to the registry had the right to do so and they immediately recorded their title. This suit was commenced October 12, 1908 (p. 1 of Record). So then the title obtained by appellants from Morales cannot be invalidated excepting for two reasons, which are: (1) By virtue of an older instrument previously recorded, and (2) for causes which clearly appear from the registry.

Arts. 34 and 37, Mortgage Law.

It is admitted that the title of appellees has never been recorded and the trial court does not base its decree invalidating the title of appellants upon the fact that there existed any instrument previously recorded, so we may at once discard the first of the two grounds above set forth as a basis for invalidating the title of appellants. But it is contended, and it was so held by the trial court (conclusion of law No. II, p. 40 of Record), that when appellants purchased the lands in dispute from Morales the record showed that the dominio title held by the latter had been secured under and by virtue of the judicial order of April 4, 1899; that, as said

judicial order was null and void, the record was constructive notice to appellants of the nullity of said title of dominio recorded in favor of Morales; that, therefore, the title of appellants is invalidated for causes which appear from the registry. We cannot agree with this reasoning. In the first place, the exact language of the law is: "Contracts * * * shall not be invalidated with regard to third persons, after they have once been recorded, * * * *for reasons which do not clearly appear from the registry*" (Art. 34, Mortgage Law), or, as stated in article 37 of the same law; "* * * (1) Suits for rescission or determination of title which are due to the causes *plainly expressed in the registry.*" We believe it is pertinent to inquire if the nullity of the judicial order of April 4, 1899, appeared *clearly* from the registry of property when appellants purchased the lands from Morales. If it did not, then, we submit, it cannot serve as a reason for invalidating the title of appellants.

It will be observed that it is not sufficient that the reason, or cause, which serves to invalidate the contract or title appear from the registry, but it must *clearly* appear or be *plainly* expressed.

Galindo, Legislación Hipotecaria, vol. 2, p. 369, 4th edition.

If it be admitted for the sake of argument that the third paragraph of the judicial order of April 4, 1899, is invalid, as held by the trial court herein, yet we respectfully submit that such invalidity did not *clearly* appear from the record of title of Morales in the registry of property. All that the record showed was that the possessory title of Morales had been converted into a dominio title by virtue of the provisions of the aforesaid judicial order. That it was possible for a person to deduce from this record that said title of dominio was invalid, supposing the said judicial order to be void, is not sufficient according to the terms of article 34 of the Mortgage Law. To fulfill the requirements of this

last article, for the invalidation of the title of defendants after its record in the registry of property, it is necessary that the invalidity of the title of Morales should have *clearly* appeared from the record in the registry of property, and it is not sufficient for such purpose that such invalidity was capable of being deduced from what appeared in the registry of property. If minds trained in the law can honestly differ as to the validity of the aforesaid judicial order, how can it be said that the invalidity of the title of Morales *clearly* appeared from the registry?

But under heading No. III of this brief we have discussed the validity of the judicial order of April 4, 1899, and established, so we believe, that said order, so far as it amended the mortgage law and provided for the conversion proceedings therein set forth, is not repugnant to any constitutional provisions, but is perfectly good and valid. If our argument under the aforesaid heading No. III is sound, it is clear that the holding of the trial court that the registry afforded appellants constructive notice of the nullity of the title of Morales cannot be sustained. It therefore seems to us that the trial court in deciding that the title of appellants is null and void, has in fact invalidated said title, and its action in so doing was not in virtue of a prior deed recorded, nor was it for reasons which *clearly* appeared from the registry, and hence such decision violates the provisions of article 34 of the Mortgage Law of Porto Rico.

It may also be argued that, as the title of Morales is admittedly void because of fraud, therefore he could not give title to appellants. But this is to mistake both the spirit and the letter of article 34 of the Mortgage Law of Porto Rico. Such article assumes that the grantor has no title in fact, or law, but that he merely *appears* to have it from the registry.

The title of appellants is invulnerable to the present attack made upon it by appellees, not because Morales possessed any title which he made over to appellants, but because appel-

lants purchased for value (contracted with) from the person who, according to the registry of property, had a right to sell and make over such title and then recorded the title so acquired. Before appellants could invoke the protection of said article 34 it was necessary that their title be recorded. This is clear from the wording of the article itself (Galindo. Legislación Hipotecaria, p. 367, 4th edition). The recording of appellants' title therefore was vital, and such recording in conjunction with the other conditions set forth in said article 34 made their title invulnerable to attack.

A late decision of the Supreme Court of Porto Rico involving the construction and application of articles 34 and 36 and 37 of the Mortgage Law, and a decision in many respects in point with the case at bar, is that of Manuel de Jesús Carmona y Rios *et al. vs.* José Cuesta Viyeyas *et al.*, decided March 29, 1912. Omitting unimportant details the case in substance is as follows: A is the owner of a tract of land but his deed is not recorded. B by means of void judicial proceedings secures the decree of a court declaring the dominion or ownership of said tract of land in his favor and records the same February 13, 1906. A (or his heirs) recorded his title February 25, 1909, or three years after B had recorded his void title. On December 8, 1905, A sold the land to C who recorded his deed February 13, 1906. C in turn sold to D, who recorded his deed December 18, 1906. The heirs of A sued B, C and D to recover the aforesaid tract of land praying that they be declared owners of the same. The court held that though the title of B was void yet the titles of C and D could not be cancelled, as such titles were protected by the provisions of articles 34 and 36 of the Mortgage Law. The court said:

> "Now, then, the proceedings instituted by Cuesta Viyeyas (B) to establish his dominion title being null and void, can the record thereof made in the registry of property of San Juan be cancelled? Our answer to that question must be in the negative. The nullity of the dominion title proceedings can not af-

fect the defendants, Domingo Soldini (C) and Miss Mary Leitch (D), who acquired their rights from persons who appear of record to be vested with the right to execute the contracts contained in the deed attacked as void, the record whereof is sought in the complaint to be cancelled, nothing appearing from the registry that could vitiate the title of José Cuesta Viyeyas (B), from whom the two other defendants acquired their title of ownership. Both Soldini (C) and Miss Mary Leitch (D), are protected by the provisions of articles 34 and 36 of the Mortgage Law already quoted."

This decision is not yet reported in the regular reports, but appears in the advanced sheets containing the recent decisions of the Supreme Court of Porto Rico. A verbatim copy of said decision is given at the end of this brief as an addendum thereto.

In consideration of all the foregoing, it is respectfully submitted that the decree of the trial court in this cause should have been against the appellees and in favor of the appellants, and that the bill of complaint herein should have been dismissed. We therefore respectfully ask that the decree of the District Court of the United States for Porto Rico be reversed, and the cause remanded to that court with instructions to enter its decree in this cause in favor of appellants and that it order the dismissal of the bill of complaint herein, or if this court be of the opinion that such instructions are not proper, that then this cause be remanded to the District Court of the United States for further proceedings in accordance with law.

T. D. MOTT, JR.,
Attorney for Appellants.

Addendum.

IN THE SUPREME COURT OF PORTO RICO.

(No. 597. Decided March 29, 1912.)

MANUEL DE JESÚS CARMONA Y RÍOS *et al., Plaintiffs and Appellants.*

vs.

JOSÉ CUESTA VIYEYAS *et al., Defendants and Respondents.*

Appeal from the District Court of San Juan.

Mr. Chief Justice HERNÁNDEZ delivered the opinion of the court.

The complaint which was the foundation of this action and which was filed in the District Court of San Juan on December 16, 1909, after alleging the facts which the plaintiffs, Manuel de Jesús, Juan Antonio, and Rafael Carmona Ríos, and Amalia del Pilar Martinez y Dominguez, saw fit to state in support of their rights, concluded with the prayer that judgment be rendered by which it should be declared and decreed: (*a*) That the plaintiffs are the lawful owners of a rural property of 40 *cuerdas*, situated in *barrio* Mucarabones in the municipality of Toa Alta, as described in the complaint; (*b*) that the proceedings instituted by the defendant, José Cuesta Viyeyas, to establish his dominion title to a rural property of 50 *cuerdas* in *barrio* Mucarabones in the municipality of Toa Alta, including in said property the other estate of 40 *cuerdas* above mentioned, and which proceedings were approved by a judicial decision of August

30, 1905, are void and that the record thereof in the Registry of Property of San Juan should be canceled; (*c*) that the deed of December 8, 1905, by which the defendant, José Cuesta Viyeyas, sold said property of 50 *cuerdas* to the codefendant, Domingo Soldini, is also void, and the record of said sale made in the registry of property should be canceled accordingly; (*d*) that the deed of sale and mortgage of said property of 50 *cuerdas* executed on October 12, 1906, between codefendants, Domingo Soldini and Miss Mary Leitch, is also void, and the record thereof made in the registry of property should, therefore, be canceled; (*e*) that the defendants be adjudged to pay the costs and reasonable expenses caused by the suit, including plaintiff's attorney's fees.

The defendants, José Cuesta Viyeyas and Domingo Soldini, in their answer to the complaint prayed judgment in their favor, with costs to the plaintiff; and the same prayer was made by the defendant, Miss Mary Leitch, with the further request that in case judgment should be rendered in favor of the plaintiffs, Domingo Soldini and José Cuesta Viyeyas, should be adjudged to pay Miss Mary Leitch the value of the lands and the improvements thereon, with attorney's fees and costs.

The trial having been set for March 16, 1910, after the introduction of evidence by the plaintiffs, the defendants made a verbal motion for judgment in their favor and against the plaintiff, and the court, by judgment of the 21st of the same month, denied the prayers of the complaint without any special imposition of costs, from which judgment the plaintiffs took the present appeal to this Supreme Court.

From the allegations made by the parties and from the evidence introduced at the trial it appears:

1. That by public deed of August 27, 1879, Juan Bonifacio Carmona acquired from Nemesio Rodríguez a rural property of 40 *cuerdas*, more or less, situated in *barrio*

Mucarabones in the municipality of Toa Alta, with the following boundaries: Beginning at a *jobo* tree and running in a straight line bordering on property of José María Narváez up to another *jobo* tree on the margin of the Salada Brook, following its course upwards through its windings and bordering on lands of Manuel Carmona up to its junction with another brook; thence in a straight line bordering on lands of Merced Santiago, or of the Toa Baja church, up to a mulberry tree; thence in a straight line bordering on lands of Ezequiel Rosado up to an *aguacate* tree; thence in a straight line to a stump of a *capá blanco* tree bordering on lands of José María Estrada; thence in a straight line bordering on lands of José Montañez to an *abey* or hardwood tree; thence bordering on the same and in a straight line to the original point, where the boundary line ends. Said deed was recorded in the registry of property on February 25, 1909.

2. That by a nuncupative will executed by Juan Carmona on October 12, 1887, he declared to have been married the first time to Florentina Ríos, by which marriage they had three children named Manuel, Juan Antonio, and Rafael, and a second time to Carlota Domínguez, by whom he has not had any issue, although she was in the family way; that when he was married the second time he possessed, among other properties, one in *barrio* Mucarabones in the municipality of Toa Alta; that he instituted as his heirs his three children had by the first marriage and the posthumous one which might be born to the second, and he appointed testamentary executor of his will, in the first place, Manuel Valdés. By virtue of said testament and other documents presented to the registry, a half interest in said property of 40 *cuerdas* was recorded in favor of Manuel, Juan Antonio, Rafael Carmona y Ríos, and José Dolores Carmona y Domínguez on November 16, 1909.

3. That the District Court of San Juan designated as heirs intestate of Florentina Ríos y Nater her children, Manuel

de Jesús, Juan Antonio, and Rafael Carmona y Ríos, by order of November 26, 1908, and by another order of the same date designated as heir intestate of José Dolores Carmona y Domínguez, her mother, Carlota Domínguez y Nieves, both orders being recorded in the registry of property; another order was made, its date not appearing herein, by which the same court designated as heir intestate of Carlota Domínguez y Nieves, her niece, Amalia del Pilar Martínez y Domínguez, one of the plaintiffs herein, which last order, up to the date of the trial, had not been recorded in the registry.

4. That José Cuesta Viyeyas, by petition dated April 13, 1905, instituted proceedings before the District Court of San Juan to establish his dominion title to two rural properties, one located in *barrio* Mucarabones in the municipality of Toa Alta, composed of 50 *cuerdas*, bounded on the north by lands of Antonio Soler y Serrano; on the south by lands of Juan Montañes and B. Y. Murphy; on the east by lands of Charles Tilbrick, represented by Mr. Morton; and on the west by lands of Francisca Hernández and José Monserrate Maysonet, which property, as stated by Viyeyas, was purchased by him in the month of July, 1904, from Santiago Olivo, with the consent of the latter's wife, Felipa Rodríguez, Olivo having acquired it by purchase from Prudencio Velilla in 1883, and Velilla, also by purchase from Manuel Valdés, in 1881. The *fiscal*, the adjoining owners, and the former owners, Santiago Olivo, were notified of the proceedings, summonses were published in the newspapers, three witnesses testified, and after all the proceedings the judge rendered a decision on August 30, 1905, declaring that the dominion title to said property had been established in favor of José Cuesta Viyeyas, and ordering that the proper certificate be issued so that he might record his title in the registry of property.

5. That by public deed executed on December 8, 1905, José Cuesta Viyeyas sold to Domingo Soldini, for $625, the

same property of 50 *cuerdas* which was object of the dominion title proceedings already referred to, of which sale a cautionary notice was entered in the Registry of Property of San Juan on January 22, 1906, admission to record of said sale having been denied because said property did not appear recorded in favor of the vendor nor of any other person.

6. That on February 13 following the dominion title to said property in favor of José Cuesta Viyeyas was recorded in the Registry of Property of San Juan with the curable defect that the judicial decision adjudging said dominion title did not state whether the petitioner was married or single nor whether the former owner had been summoned, and on the same date the cautionary notice entered on January 22, 1906, was converted into a final record of ownership of said property in favor of Soldini.

7. That by deed of October 12, 1906, Domingo Soldini sold to Miss Mary Leitch the property in question, together with another one, for $2,170, of which sum the vendor acknowledged having previously received $1,000 and for the balance of $1,170, which was to be paid within eight months from the date of the execution of the deed Miss Mary Leitch constituted a voluntary mortgage upon the property in question. Said deed of sale and mortgage was admitted to record in the registry of property on December 18, 1906, the mortgage being afterwards canceled on May 15, 1909.

8. That according to oral testimony taken at the trial, upon the death of Juan Bonifacio Carmona which, according to the witness Rafael Carmona, took place in the year 1887, and according to the witness Emilio Egozcue, about the year 1887 or 1888, Manuel Valdés took charge of a certain property owned by Juan Bonifacio Carmona in *barrio* Mucarabones, municipality of Toa Alta, which is the same property that was sold by Valdés to Prudencio Velilla and by the latter to Santiago Olivo, and afterwards transferred by deed of sale to the defendants, Cuesta Viyeyas, Domingo

Soldini, and Miss Mary Leitch, successively. Velilla admitted that he had purchased the property from Valdés, the latter representing Carmona, who had already died, and a document signed by minors had been drawn, the said Velilla explaining to Santiago Olivo the manner in which he had made the purchase from Valdés.

Having stated the facts proved at the trial, let us now dwell upon the legal provisions applicable to them in order to come to a decision of this appeal.

In accordance with article 33 of the Mortgage Law, *the record of instruments or contracts which are null in accordance with the law are not validated thereby; and in accordance with the following article, notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by a person who, according to the registry, has a right thereto shall not be invalidated with regard to third persons after they have once been recorded, although later the right of the grantor is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry; it is further provided in that article that only by virtue of a recorded instrument may another later instrument, also recorded, be invalidated to the prejudice of third persons, with the exceptions mentioned in article* 389, *nor may the provisions of article* 34 *at any time be applied to the instrument recorded in accordance with the provisions of article* 390, *unless the prescription has validated and secured the interest referred to therein.*

Article 389, cited above, *establishes the necessity of recording in the registry of property all instruments concerning property rights, without which requisite they are not admissible as evidence before any court, council, or government, or governmental office, if the object of the presentation be to enforce to the prejudice of third persons the interest which should have been recorded, unless the object of the presentation be only to corroborate another subse-*

quent instrument already recorded, or to demand a declaration of nullity and consequent cancellation of some entry which prevents the record of said document.

Article 390 refers to titles acquired by proceedings to establish possession the record of which, according to the provisions of article 392, *is made without prejudice to a third person having a better claim.*

Article 36 of the same Mortgage Law provides that *suits for rescission or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law,* which rule is subject to the exceptions prescribed by article 37, *among which exceptions are included suits for rescission or determination of title which are due to the causes plainly expressed in the registry;* and the last paragraph of article 38 provides that *where the suit for rescission or determination of title cannot be instituted against the third person, in accordance with the provisions of said article, the corresponding personal action may be brought to recover indemnity for the injuries and damages suffered from the person who may have been the cause thereof.*

For the purposes of the Mortgage Law, according to article 27 thereof, those who have not participated in the recorded instrument or contract shall be considered as third persons. And no one can be considered as a third person who, although not having taken part in the instrument or deed recorded, had knowledge at the time of the acquisition of the property, or prior to that act, of the encumbrances and liens existing upon the property, according to the decisions of the Supreme Court of Spain of October 8, 1885, January 11, 1895, and February 7, 1896, reaffirmed by the Supreme Court of Porto Rico in its decisions of December 30, 1899, and June 30, 1906. (*Decisiones de Puerto Rico,* vol. 1, p. 75; 11 P. R., 275.)

Now, then, one of the prayers of the complaint is that the proceedings to establish the dominion title to the property

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of 50 *cuerdas,* approved August 30, 1905, of which property the plaintiffs claim to be owners, be adjudged null and void, and that the record thereof made in the registry of property be canceled.

Juan Cuesta Viyeyas took part in the prosecution of those proceedings to try title now recorded in the registry of property, and in accordance with article 27 of the Mortgage Law he cannot claim to be a third party. Said property of 50 *cuerdas* had not yet been recorded in the registry of property when Viyeyas acquired it from Santiago Olivo, and therefore to sustain the validity of his title he cannot allege that he acquired from a person whose right to dispose of it appears from the registry.

The said proceedings to establish ownership are substantially void, although the external formalities required by the mortgage law for their prosecution had been complied with and the former owner summoned, for although it appears therefrom that Cuesta Viyeyas acquired the property in 1904 by purchase from Santiago Olivo, who purchased it from Prudencio Velilla in 1883, and Velilla from Manuel Valdés in 1881, inasmuch as Valdés knew that said property did not belong to him, but to Carmona or his heirs, and as Velilla testified that he had purchased the property from Valdés as the representative of Juan Carmona, who was already dead, which representation could not be claimed by Valdés as executor of Carmona, and as the said Velilla testified that he had informed Santiago Olivo of the manner in which he purchased said property from Valdés—that is, through a document signed by minors—it is evident that Cuesta Viyeyas cannot invoke in the present case the ordinary term of prescription as a foundation of his dominion title, because, although he may have purchased it from Olivo in good faith and with good title, his possession runs from 1904, and the possession held by his predecessors cannot be added to his to complete the period of ten years, but only to make up the period of thirty years required by section

1860 of the Civil Code to complete the extraordinary term of prescription, which time, as clearly appears in this case, has not run out. The elements of good faith and good (*justo*) title required for the ordinary term of prescription cannot be invoked in favor of the predecessors of Cuesta Viyeyas.

And referring to the nullity of the proceedings to establish a dominion title, we must state that, in view of the fact that Juan Bonifacio Carmona executed his will on October 12, 1887, and died that year, or the year following, possessed of said property, Manuel Valdés could not, as an executor appointed in said will, sell the property in question to Velilla in 1881, nor could the latter convey it to Olivo in 1883, as alleged by Cuesta Viyeyas in the initial motion for the proceedings to establish his dominion title, and which were approved in his favor. Such sales must necessarily have taken place subsequently to the death of Carmona.

Now, then, the proceedings instituted by Cuesta Viyeyas to establish his dominion title being null and void, can the record thereof made in the registry of property of San Juan be canceled? Our answer to that question must be in the negative. The nullity of the dominion title proceedings cannot affect the defendants Domingo Soldini and Miss Mary Leitch, who acquired their rights from persons who appear of record to be vested with the right to execute the contracts contained in the deeds attacked as void, the record whereof is sought in the complaint to be canceled, nothing appearing from the registry that could vitiate the title of José Cuesta Viyeyas, from whom the two other defendants acquired their title of ownership. Both Soldini and Miss Mary Leitch are protected by the provisions of articles 34 and 36 of the Mortgage Law already quoted.

And it cannot be advanced against Domingo Soldini that when he acquired the property by public deed, executed on December 8, 1905, the ownership of said property in favor of Cuesta Viyeyas had not yet been entered of record in the registry of property, and therefore he acquired from a per-

son who did not appear upon the registry as vested with the right to convey the same. Such argument cannot affect Soldini, because he acquired with the knowledge that Cuesta Viyeyas was vested with the right to convey the property according to the dominion title proceedings previously approved, and his purchase was recorded in the registry when said dominion title proceedings had already been recorded, and therefore it appeared from the registry that Cuesta Viyeyas was vested with the right to convey.

Appellants contend that article 34 of the Mortgage Law cannot be invoked either in favor of Soldini or of Miss Mary Leitch, because the provisions of that article refer to the case where the title of the grantor is annulled or determined by virtue of a prior deed not recorded or for reasons which do not clearly appear from the registry. In the case at bar there is a prior title, namely, the deed of August 27, 1870, executed in favor of Juan Bonifacio Carmona, and that title was recorded in the registry on February 25, 1909, subsequently to February 13, 1906, when the declaration of ownership in favor of Cuesta Viyeyas was recorded.

We are of the opinion that for a recorded title to invalidate to the prejudice of an innocent third party another title subsequently recorded it is necessary that the record of the former should be prior to that of the latter, since it would be an absurdity to hold that an older title unrecorded at the time of recording a later title could annul or prejudice the later title when the existence of the older title does not appear nor could be established from the registry.

Although we hold that the proceedings to establish ownership approved in favor of Juan Cuesta Viyeyas are void, since the defect of nullity does not clearly appear from the registry and there are innocent third parties, to wit, Domingo Soldini and Miss Mary Leitch, who are *bona fide* purchasers and cannot be affected by said nullity, we think that the record thereof cannot be canceled and that the titles of Domingo Soldini and of Miss Mary Leitch must be left

standing, because their cancellation would openly contradict the provisions of the mortgage law above cited. This does not prevent the plaintiffs from bringing a personal action to recover damages from the person who has caused them.

For these reasons the appeal should be dismissed and the judgment rendered by the District Court of San Juan, on March 21, 1910, should be affirmed, without prejudice to the rights of the plaintiffs to bring an action for damages against the person who has caused them.

[18973]